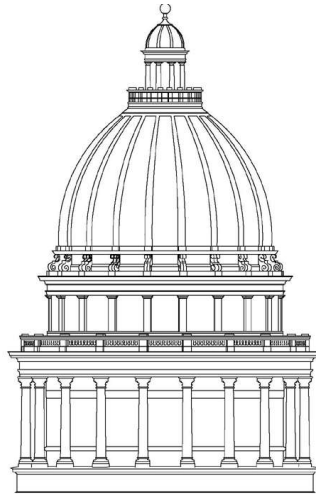


REPORT TO THE  
**UTAH LEGISLATURE**

Number 2019-04



**A Performance Audit of Tooele County's  
Sale of the Utah Motorsports Campus**

May 2019

Office of the  
LEGISLATIVE AUDITOR GENERAL  
State of Utah





STATE OF UTAH

# Office of the Legislative Auditor General

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## Audit Subcommittee of the Legislative Management Committee

President J. Stuart Adams, Co-Chair • Speaker Brad R. Wilson, Co-Chair

Senator Karen Mayne • Senator Evan J. Vickers • Representative Brian S. King • Representative Francis D. Gibson

KADE R. MINCHEY, CIA, CFE  
AUDITOR GENERAL

May 14, 2019

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of Tooele County's Sale of the Utah Motorsports Campus** (Report #2019-04). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink that reads "Kade minchey". The signature is written in a cursive, slightly slanted style.

Kade R. Minchey, CIA, CFE  
Auditor General



# **Digest of A Performance Audit of Tooele County's Sale of the Utah Motorsports Campus**

In May 2015, the Tooele County Commission learned that the Miller Group would not renew its lease on the property where the Miller Motorsports Park was located. Lacking expertise to operate a raceway, county officials immediately decided to sell the property. However, concerns were raised when county leaders passed over an offer to purchase the property for \$22.5 million and instead accepted a \$20 million bid. Some questioned whether county officials had conflicts of interest or were otherwise biased in favor of the group submitting the lower bid. Additional concerns were raised when the county lost a legal battle over the legitimacy of the sale. To address these concerns, the Utah State Legislature asked the Legislative Auditor General to examine the county's sale of the raceway as well as the commission's oversight of the park during the three years it was owned by the county.

## **Chapter II Mishandled Sale of the Utah Motorsports Campus Was Costly**

Tooele County mishandled the sale of the Utah Motorsports Campus by not following commonly used best practices for selling public property. The county was later subjected to a lawsuit challenging its sale processes and its decision to accept the lower of two offers it had received. The county had difficulty defending itself due to the lack of a documented process. Due to the many variables that occurred 3 to 4 years ago, we can't say with certainty exactly how much the county lost through its mishandling of the sale. However, the resulting delay led to operating losses at the park which, in turn, contributed to the county receiving millions less than it would have if the initial sale had been successfully completed.

**Tooele County Did Not Follow Best Practices for Selling Public Property.** We reviewed the process used to sell 20 significant public properties by cities and counties both within and outside of Utah and found six commonly used best practices. They are:

1. Use an appraiser to establish fair market value
2. Publicly announce the property is for sale
3. List the required contents of a qualified proposal
4. Identify the criteria that will be used to evaluate proposals
5. Create an independent panel to review proposals
6. Document the decision-making process

We believe if Tooele County had used these best practices during its first attempt to sell the property, it would have been better able to defend the action against a court challenge.

**Tooele County Received Millions Less Than It Could Have from the Sale of the Raceway.** We cannot say with certainty the extent to which the county's losses can be attributed directly to the mishandled sale of the raceway. What is clear is that a well-executed sale could have allowed Tooele County to complete the agreed upon \$20 million sale to Mitime in 2015. Due to several missteps by the county, and other events that were out of its control, the final sale was delayed. The county then suffered several years of operating losses and litigation expenses which greatly reduced the proceeds from the final raceway sale in 2018. After deducting \$9.36 million in operating losses and \$1.8 million in litigation costs, the sale of the raceway only produced a \$7.36 million gain.

**No Conflicts of Interest Found but Commission Can Improve Transparency.** By not adhering to best practices for selling public properties and by not documenting the decision-making process, the Tooele County Commission left itself open to criticism for rejecting the highest offer. Our review of county and UMC records found no support for allegations that the commissioners' decisions were influenced by a conflict of interest. However, to avoid facing similar criticism in the future, the Tooele County Commission should consider ways to provide greater transparency in the way it does business.

### **Chapter III**

## **Tooele County's Oversight of the Raceway was Inadequate**

As soon as the raceway became a county-owned enterprise, the commission acknowledged its responsibility to oversee the operations at the park and to protect that county asset. However, we found several financial management practices that should have been used to oversee raceway operations but were not.

**Misleading Financial Reporting Impeded Accountability.** One basic tool used to provide accountability for an organization is its annual financial statements. They can help the public hold government officials accountable for their use of taxpayer funds. However, we found the county did not provide an accurate reporting of the debts incurred while UMC operated the raceway. Tooele County did not properly disclose county liabilities in 2016 and 2017 and overstated projected raceway sale proceeds. Furthermore, deficiencies reported by the county's external auditors indicate the county's internal controls over financial statements are not limited to just the raceway and need improvement in multiple areas.

**Commission Did Not Provide Adequate Budgetary Oversight.** The commission did not use the typical, annual budget process as a tool to effectively control spending at the raceway. Because the county owned the raceway and agreed to language in the signed management agreement, all raceway revenues and expenses belonged to the county. Any

losses incurred at the raceway would belong to the county. For this reason, state law requires that raceway revenues and expenses be included as part of the adopted county budget and that the raceway budget be disclosed to the public during the county's budget hearings. However, we found no evidence of the commission's oversight of the budget.

**Tooele County Did Not Provide Adequate Oversight for Capital Asset Purchases.**

UMC made large asset purchases for the raceway despite not obtaining proper commission approval. In addition, UMC appears to have purchased capital assets without financial or business justification. Once those assets were purchased, the county did not adequately protect its investment by conducting regular inventories of equipment and other items it owned at the raceway. The absence of basic asset purchasing and inventory practices suggests that the commission did not provide the raceway with the same level of oversight that it provides other government departments.





# REPORT TO THE UTAH LEGISLATURE

Report No. 2019-04

## **A Performance Audit of Tooele County's Sale of the Utah Motorsports Campus**

May 2019

### Audit Performed By:

Audit Manager	Benjamin Buys, CPA
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# Chapter I

## Introduction

In May 2015 the Tooele County Commission was surprised to learn that it would soon become owners of the Miller Motorsports Park (raceway). The raceway had been a major attraction in Tooele County for 10 years. However, after suffering years of large annual operating losses, the Miller Group decided the 2015 season would be the park's last. As the owner of the land on which the raceway had been built, Tooele County then became the owner of the buildings, racetrack, and other improvements as well. However, lacking expertise to operate a raceway, county officials immediately decided to sell the property.

Concerns were raised when county leaders passed over an offer to purchase the property for \$22.5 million and accepted a \$20 million bid. Some questioned whether county officials had conflicts of interest or were otherwise biased in favor of the group submitting the lower bid. Additional concerns were raised when the county lost a legal battle over the legitimacy of the sale. To address these concerns, the Utah State Legislature asked the Legislative Auditor General to examine the county's sale of the raceway as well as the commission's oversight of the park during the three years it was owned by the county. This report summarizes the results of that review.

### Sale of Raceway Took Three Years to Complete

For 10 years, the Miller Motorsports Park had been a major attraction in Tooele County. The facility hosted several events on the national racing circuit each year, as well as many amateur racing events. The raceway was also home to the Ford Performance Racing School and the Shelby American museum and collection. The campus includes a 4.5-mile racetrack, 2 off-road dirt tracks, 13 service garages, a clubhouse, and an office building. In 2006, the raceway was named the Motorsports Facility of the Year by the Professional Motorsports World Expo in Germany. Figure 1.1 includes pictures of events and activities at the raceway. Figure 1.2 shows an aerial view of the raceway.

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**County leaders passed over a higher bid during the initial raceway sale.**

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**The campus includes a 4.5-mile racetrack, 2 off-road dirt tracks, 13 service garages, a clubhouse, and an office building.**

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**Figure 1.1 The Raceway Hosts Events from the National Racing Circuit as Well as Many Amateur Events.** The raceway hosts national racecar, motorcycle, and off-road events. Amateur hobbyists may drive street cars on the speedway on “Wide Open Wednesday.” A go-kart track is also available to the public.



Source: Utah Motorsports Campus

Many events are held at the raceway.

**Figure 1.2 Aerial View of the Raceway.** The facility includes 4.5 miles of racetrack, 2 dirt tracks, and a go-kart track. Once it became property of Tooele County, the Miller Motorsports Park was renamed the Utah Motorsports Campus.



Source: Utah Motorsports Campus

By not renewing its lease for the land, the Miller Group gave the county ownership of the raceway and other improvements it had made on the property. County commissioners were hopeful they might find a buyer who could operate the raceway profitably and continue to provide the economic benefits it had offered in the past.

### **The Raceway Was a Difficult Property to Sell**

After learning they would own the facility, and lacking expertise to operate a raceway, the Tooele County Commission immediately set out to find a buyer for the property. There were three reasons why this was an especially difficult task:

- The value of the raceway would be diminished if its operations were interrupted for any length of time. To maintain its reputation as a host of major racing events, the county needed to find a new owner who could immediately begin to schedule events for the 2016 season. The county also needed to reassure raceway tenants, including the Ford Performance Racing School, for example, that it would continue to operate. Together, these factors necessitated an expedited sale.
- The raceway was not fully operational. Much of the equipment needed to operate the raceway would be sold or retained by the Miller Group before vacating the property. As a result, a new owner would need to make a large upfront capital investment to make the raceway operational.
- A raceway is a highly specialized property for which there is a limited market. Similar properties have been on the market for a year or more before being sold.

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**The raceway needed to be sold quickly but required a large upfront capital investment.**

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### **Two Court Challenges Delayed the Sale of the Raceway**

Tooele County officially announced the raceway was for sale in July 2015 and, one month later, declared Mitime as the winning bidder. The sale was then challenged in court by Center Point, the company that had offered \$2.5 million more than the offer that was accepted. In December 2015, a judge ruled in favor of Center Point's claim and invalidated the sale to Mitime. Although it was unable to sell the property, the county commission decided it needed to keep the

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**Tooele County hired UMC to operate the raceway after the initial sale was invalidated.**

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**Tooele County settled litigation with Center Point for \$1.55 million.**

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raceway operating in order to retain its value and to address the needs of raceway tenants. For this reason, the county commission hired an outside operator to manage the raceway until the county could resolve the legal barriers to its sale. The county hired Utah Motorsports Campus (UMC), a subsidiary created by Mitime, to run the raceway.

After the original sale was overturned, the commission was advised that it could overcome some of the legal barriers to its sale by classifying the raceway as a redevelopment project and by selling it through the county redevelopment agency. However, that sale was also challenged in court by Center Point. After months of additional litigation, Center Point agreed to drop its claims after the county agreed to pay the company a settlement of \$1.55 million.

In April 2018, Tooele County announced it was making a third attempt to sell the property. The county received just one offer—a bid from Mitime for \$18.55 million. The county accepted the offer, and the property was transferred to Mitime in December 2018. Figure 1.3 offers a timeline of events during the three and a half years Tooele County attempted to sell the raceway.



**Figure 1.3 Timeline of Events Related to Raceway Sale and Operation.** After three and a half years of attempts to sell the property as well as multiple court challenges, Tooele County finally sold the raceway in December 2018.

Date	Significant Event Related to Tooele County Raceway, Operation, and Sale
5/8/2015	Tooele County receives notice that the Miller Group intends to cease operations of the Miller Motorsports Park as well as its lease of the property, effective February 29, 2016.
7/21/2015	Tooele County publishes public notice of sale of raceway and requests bids.
7/23/2015	Sealed bids for raceway sale are due.
8/18/2015	Tooele County Commission announces Mitime as the winning bidder for the raceway.
9/8/2015	Center Point files legal complaint seeking to set aside sale to Mitime.
12/17/2015	Judge rules in favor of Center Point and sets aside sale to Mitime.
1/7/2016	Tooele County signs management agreement with Utah Motorsports Campus, a subsidiary of Mitime, to operate the raceway under county ownership.
8/24/2016	Tooele County Commission announces proposed sale of the raceway to the Redevelopment Agency of Tooele County.
8/30/2016	Center Point files legal complaint seeking to set aside sale of the raceway to the Redevelopment Agency of Tooele County.
11/28/2017	Tooele County pays Center Point \$1.55 million to settle legal complaint and remove Center Point from consideration for a future sale of the raceway.
4/19/2018	Tooele County publishes request for proposals for raceway sale.
9/11/2018	Tooele County announces intent to sell raceway to Mitime.
12/27/2018	Settlement/closure of sale with payment of \$9.2 million to Tooele County after payment for liabilities owed Utah Motorsports Campus.

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**Utah Motorsports Campus, a subsidiary of Mitime, operated the raceway in behalf of the county.**

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### **UMC Operated the Raceway for Three Years in Behalf of Tooele County**

After the initial sale was set aside by the court, Tooele County contracted with UMC to operate and maintain the raceway. The management agreement between the commission and UMC in January 2016 specified the responsibilities of both parties. UMC would run the raceway in behalf of Tooele County and use its own money to pay for capital assets and annual losses. The commission would provide oversight of these activities and agreed to eventually pay UMC for capital asset purchases, annual losses, and management fees. The commission later agreed to pay UMC interest on any amounts that were unpaid before the final sale. By the end of 2018,

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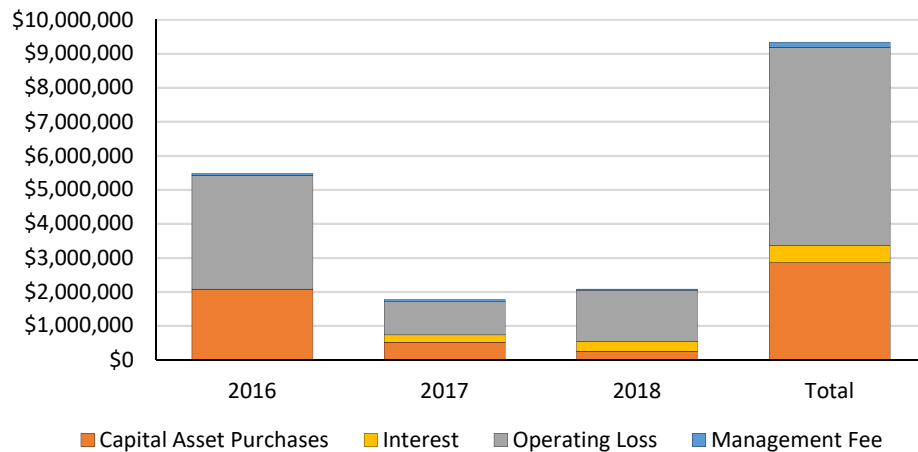
**The county agreed to pay UMC for raceway capital asset purchases, annual losses, and management fees.**

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when the property was finally sold to UMC, Tooele County owed UMC approximately \$9.3 million. Figure 1.4 shows the liabilities accrued by Tooele County during the three years it owned the raceway.

**Figure 1.4 Annual Liabilities Under the Management Agreement Peaked in 2016.** Operating losses made up the largest category of liabilities over the life of the agreement.

**County raceway liabilities totaled \$9.3 million at the end of the management agreement.**



Source: Final sale reconciliation documents

Tooele County paid these liabilities as part of the final sale of the raceway. Of the \$18.55 million final price, Tooele County received \$9.2 million. A detailed analysis of the cost of mishandling the initial sale of the raceway and the resulting delay is presented in Chapter II.

## Audit Scope and Objectives

We reviewed records related to the multiple attempts by Tooele County to sell the raceway, including court documents and county records. We also reviewed records related to the period of time when Tooele County owned the raceway and contracted with UMC to operate it. Due to allegations of conflicts of interest, we also reviewed the business relationships of various parties involved in the raceway sale. This audit had three main objectives:

- Determine whether Tooele County followed policies, procedures, and best practices related to the sale of the raceway.
- Identify any conflicts of interest between the county commissioners and Mitime.
- Determine whether Tooele County provided adequate oversight while UMC operated the raceway.

## **Chapter II**

### **Mishandled Sale of the Utah Motorsports Campus Was Costly**

Tooele County mishandled the sale of the Utah Motorsports Campus by not following commonly used best practices for selling public property. The county was later subjected to a lawsuit challenging its sales process and its decision to accept the lower of the two offers it had received. The county had difficulty defending itself due to the lack of a documented process. Due to the many variables that occurred 3 to 4 years ago, we can't say with certainty exactly how much the county lost through its mishandling of the sale. However, the resulting delay led to operating losses at the park which, in turn, contributed to the county receiving millions less than it would have if the initial sale had been successfully completed.

In addition, the lack of transparency surrounding the sale led some to ask whether the county commission was improperly influenced to accept the offer from Mitime even though there were other, higher offers. We found no support for such allegations. However, to avoid raising similar concerns in the future, the commission should be more open in how it conducts its business.

#### **Tooele County Did Not Follow Best Practices for Selling Public Property**

During its first attempt to sell the motorsports park, Tooele County did not follow commonly used best practices for selling public property. We reviewed the process used to sell 20 significant public properties by cities and counties both within and outside of Utah and found six commonly used best practices. The six best practices that Tooele did not adequately apply are as follows:

1. Use an appraiser to establish fair market value
2. Publicly announce the property is for sale
3. List the required contents of a qualified proposal
4. Identify the criteria that will be used to evaluate proposals
5. Create an independent panel to review proposals
6. Document the decision-making process

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**Our study of 20 sales of public property show six commonly used best practices.**

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**By having an appraisal done, a public entity can ensure property is not sold for less than its fair market value.**

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The above list is not only supported by our study of 20 property sales but is also consistent with Utah state law and a key ruling by the Utah Supreme Court.

We believe if Tooele County had used these best practices during its first attempt to sell the property, it would have been better able to defend its action against a court challenge. It is important to note that the county eventually recognized the importance of using the above listed best practices. During its third, successful attempt to sell the raceway, Tooele County did apply most of the best practices.

### **1. Tooele County did not Use an Appraiser to Establish Fair Market Value**

When selling public property, it is important to begin by identifying its fair market value. Doing so helps avoid disputes regarding whether the property was sold for less than it is worth. Tooele County was advised to obtain an appraisal before selling the raceway but did not do so.

**Best Practices Require Identifying the Property's Fair Market Value Before Selling Public Property.** Of the 20 cities and counties in our study of public property sales, 12 required independent verification that the proposed sale price was at least fair market value. This was either done by hiring an appraiser to assess the value of the property or by having an appraiser certify that the proposed sales price was fair. Two other entities in our study identified a minimum sales price for the property but did not specify how they determined the fair value. Utah's State Institutional Trust Land Administration (SITLA) and the U.S. Bureau of Land Management both use appraisers to establish fair market value prior to the sale of public land.

**The Tooele County Commission Was Advised to Obtain an Appraisal of the Motorsports Park but Did Not.** The Tooele County Commission asked a consultant to evaluate and compare the proposals from Mitime and Center Point. Due to the county's time constraints, they asked him to report his findings the next day. During a telephone conversation in which he described the strengths and weaknesses of both proposals, the consultant advised the commission to have an appraisal done. In a report drafted several months later

recalling the conversation, the consultant said he recommended they obtain an “updated appraisal report or ...a new appraisal that would establish the anticipated market value of the facility.” However, the commission chose not to follow the consultant’s advice. Within days they decided to select Mitime’s offer and scheduled a public hearing to announce their decision.

## **2. The Sale Should Have Been Formally Announced Via a Request for Proposals**

To be fully transparent and to allow anyone to submit an offer, a public entity should formally announce its intent to sell a piece of property. This announcement is usually accompanied by a formal request for proposals (RFP). Instead, without making a formal announcement that the raceway was for sale, Tooele County entertained many offers to purchase the property and did not issue an RFP.

**Best Practice Requires Announcing the Sale of Public Property by Issuing a Request for Proposals.** In every one of the public land sales in our study, we found a public announcement was made and a formal request for proposals was issued. To do otherwise would invite criticism that government is giving advantage to individuals with inside knowledge of the sale.

**County’s Announcement of the Sale Occurred Just Before It Ended its Search for New Buyers.** During Tooele County’s first attempt to sell the motorsports park, commissioners spent several weeks considering offers to purchase the property. Those offers generally came from individuals who were already associated with the park in some way or who had learned of the sale through news reports. Initially, the county made no formal request for proposals from the broader racing community nationwide. Then, on July 21, 2015, the commission announced its intent to sell the property but allowed just two days for new offers to be submitted. See Appendix A for the official notice of sale. In our opinion, it was unfair for Tooele County to announce its intent to sell the raceway just two days before its deadline for submitting proposals. The lack of sufficient notice and the behind-the-scenes negotiations with potential buyers, led some to question whether the county commission was giving preferential treatment to individuals with inside knowledge of the sale.

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**In each public land sale in our study, the government entity began by announcing the land sale and issuing a request for proposals.**

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**Tooele County Did Not Issue a Request for Proposals.** While Tooele County was negotiating the offer with Mitime, the commission expressed frustration that the company had not presented them with a formal offer that included the amount the company was willing to pay for the property. In response, the company indicated they could not provide a firm offer because the county had not issued a formal RFP. They said:

Tooele County has not provided potential purchasers with a specific Request for Proposal that clearly identifies the details of the land and associated elements that will be included in the purchase agreement, nor the terms of payment or conditions under which the property can be operated.

Because the county had not issued an RFP with a description of the property for sale and any conditions placed on the property's use, Mitime informed the commission that it was unable to offer a specific price for the property. Even so, the company still expressed an interest in continuing negotiations and eventually made a firm offer.

### **3. By Issuing a Request for Proposals, the County Could Have Listed the Required Contents of a Qualified Proposal**

Another best practice is to identify the information that must be included in a qualified proposal. If Tooele County had done this, it could have addressed many of the concerns it had with the proposals submitted by Center Point and Mitime.

**RFPs Normally List the Contents of a Qualified Proposal.** In all 20 of the public land sales in our study, the RFP listed the specific information required in a qualified proposal. By listing the required contents of a proposal, a government entity can ensure that each proposal meets a certain set of minimum expectations. This practice also allows for a fair and consistent evaluation of proposals.

For example, the city of Montpelier, Vermont, issued an RFP for the sale of city-owned land in its downtown business district. To ensure the development would fit the city's vision for its downtown area, the city required that each proposal explain how the property would be developed if the offer were accepted. Figure 2.1 lists the items required in each proposal.

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**By listing the required contents, a public entity can ensure each proposal addresses specific areas of concern. This practice also allows for a fair and consistent review of proposals.**

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**Figure 2.1. A Request for Proposals Should Describe the Information to Be Included in a Proposal.** The list shown is from an RFP issued by the City of Montpelier, Vermont, for the sale of property in its downtown area.

Proposal Packages must include:

- A letter of introduction
- A proposed development plan outlining the proposed use of the Property, a corresponding business plan, demonstrated experience in the field or with similar businesses, timing of project completion, and demonstrated compatibility with existing and proposed zoning regulations.
- A proposed timeline for taking occupancy of the Property under the development plan
- An offer of payment for the Property
- An analysis of municipal impacts of proposed development including grand list growth and utility usage that will be generated, if any, as a result of the development.
- A document providing evidence of Bidder's financial capability to complete the purchase and development plan
- A statement indicating how your Proposal represents the highest price and/or highest value to the City in terms of direct or indirect financial, economic, or community benefits.

*Source: Montpelier, Vermont, RFP dated April 15, 2016.*

Listing the required contents of an RFP helps potential bidders prepare a development plan that is in harmony with the goals of the community. It can also help public officials eliminate proposals that are not consistent with the entity's vision for the property. See Appendix B for the full text of the Montpelier RFP.

**Tooele County Did Not Specify the Contents of a Qualified Proposal.** The Tooele County commissioners told us they had several concerns with the proposals from Center Point and Mitime. They could have addressed these concerns by issuing an RFP that required specific information be included in each proposal.

For example, the commissioners expressed concern that Center Point's plan to build homes on the site was not consistent with the commercial zoning where the property was located. They also questioned Center Point's ability to finance the purchase and development of the property. Additionally, the commissioners expressed concern that Mitime's proposal did not offer a firm price for the property. The commission would have been better able to address

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**The Tooele County Commission should have required specific information be included in each proposal.**

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these concerns if it had issued an RFP with a list similar to what is shown in Figure 2.1.

#### **4. Tooele County did Not Identify Formal Criteria to Evaluate Proposals**

Public entities do not always need to sell property to the highest bidder. Instead, state law requires that counties develop their own rules for selling public property and that they take steps to ensure the sale is “in the public interest.”<sup>1</sup> To evaluate which proposals best accomplish the public interest, public entities typically issue an RFP listing the criteria they will use to evaluate proposals. Price is usually listed as one of the criteria. However, Tooele County did not list any criteria for evaluating proposals it would receive to purchase the raceway. It only asked for “sealed bids.”

**Every RFP in Our Study Sample Identified the Selection Criteria.** To ensure a fair and objective review, each local entity in our study of property sales publicly announced the criteria they would use to evaluate proposals. For example, Multnomah County, Oregon, decided to sell a tract of county-owned property in Portland’s downtown area. While the county expected to get fair market value for the property, it also had specific goals in mind for how the land might be developed. These goals were expressed in the list of criteria used to evaluate each proposal. These criteria are listed in Figure 2.2.

**Figure 2.2 Government Entities Should Identify the Criteria They Will Use to Evaluate Proposals.** The criteria shown are from an RFP issued by Multnomah County, Oregon, for the sale of county property in downtown Portland.

Proposals shall be evaluated in accordance with the following criteria, with the indicated weighting and a maximum score of 300 points:

- A. Property Proceeds** (130 Pts. Maximum)
- B. Development Implementation** (50 Pts. Maximum)
- C. Design Concept** (50 Pts. Maximum)
- D. Economic Development** (50 Pts. Maximum)
- E. Sustainability Commitment** (10 pts)
- F. Diversity Outreach** (10 pts)

*Source: Multnomah County, Oregon, RFP dated February 9, 2011*

See Appendix C for a full description of the standards used to evaluate

<sup>1</sup> *Utah Code* 17-50-312 (2)

To provide a fair and objective review of proposals, it is important to first identify the criteria that will be used to evaluate them.

Multnomah County, Oregon, provides a good example of how counties should publicly announce the criteria they will use to evaluate proposals to purchase public land.



each area shown in the figure. By evaluating proposals based on criteria listed in an RFP, a public entity can avoid criticism or claims of a biased selection process.

**Tooele County Did Not Announce Formal Criteria for Evaluating the Proposals It Received.** Although the Tooele County Commission was able to describe for us the reasons they selected Mitime’s proposal instead of the Center Point Proposal, they never formally announced ahead of time the criteria that they intended to use. As a result, they had difficulty proving in court that they had been objective in their approach to evaluating the proposals.

For example, the commissioners told us that compliance with the existing zoning requirements was one criterion they used to evaluate the proposals. They preferred the Mitime proposal because it was consistent with the commercial/industrial zone where the racetrack was located. In contrast, Center Point proposed building homes around the raceway which would not have been consistent with the local zoning requirements. We believe the county would have been better able to defend its actions in court if it had first drafted a formal list of criteria that they intended to use to evaluate proposals. That list could have included a requirement to comply with the local zoning.

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**Although the Tooele County commissioners had specific goals for the raceway property, they did not identify ahead of time the criteria for evaluating proposals.**

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## **5. An Independent Panel Could Have Helped Tooele County Review Proposals**

Another way to ensure an open and objective review of proposals is to appoint an independent selection committee to evaluate them against the previously developed criteria. Tooele County asked a consultant to review the two proposals to purchase the raceway; however, the consultant did not receive any criteria for evaluating the proposals and he did not document his response until after the commission’s decision was challenged in court.

**Most Communities in Our Study Appointed a Selection Committee to Evaluate Proposals.** In 16 of the 20 cases in our study of public land sales, a selection panel was used to evaluate proposals. In the remaining four cases, the city did not identify the process used. They only said that the “city” or “city council” will evaluate the proposals. The reason selection committees are used to review proposals is that it allows a public entity to demonstrate fairness and objectivity when making decisions regarding the sale of public property. Such decisions are generally viewed as being more defensible

than when public officials, who may be influenced by political pressures, make such decisions on their own.

This sentiment was expressed by the Utah Supreme Court in its decision in *Price Development v. Orem City*, which ruling was applied extensively in the legal dispute over Tooele County's sale of the raceway. In that ruling, the court states that the ability of local government to defend its actions depends on the "thoroughness of the evaluation of the transaction ... and the independence and skill of the evaluators." In summary, the court is saying that a public entity can reduce the risk of having a sale successfully challenged in court by having the proposals reviewed by an independent panel of experts.

**The Commission Asked a Consultant to Briefly Review the Proposals.** Before deciding which proposal to accept, the Tooele County Commission asked an expert in economic development to review the proposals from Center Point and Mitime. However, the commission did not provide the consultant with criteria to evaluate the proposals. The consultant did not provide a written report of his findings at that time, rather they were communicated through a telephone conversation with the commission. The consultant told the commission that he believed the Mitime proposal was preferred because it did not require a zoning change and it offered greater long-term economic benefits than the Center Point proposal. However, he also recommended the commission have the property appraised and that additional information be gathered to better evaluate the economic benefits offered by the two proposals.

While the commission did well in obtaining an independent review of the proposals, they did not provide the consultant with criteria to evaluate the proposals. Their decision was not based on a formal written response by the consultant. However, several months later the consultant did summarize his findings in a document submitted in court. As a result, the commission, in our opinion, did not meet the legal standard provided by the Utah Supreme Court requiring that "good faith legislative judgement . . . [needs to be] supported by documentation within the legislative record of an independent determination of the value of the exchange."<sup>2</sup>

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<sup>2</sup> *Price Development Co., L.P. v. Orem City*, 995 P.2d 1237 (2000)

## 6. Tooele County Did Not Adequately Document Its Decision-Making Process

Even if a public entity follows all the best practices, its decision-making process still needs to be documented. If not, the entity may be at risk of having its decisions questioned. We found very little documentation of the process used to sell the raceway.

**State Law Requires Documentation of the Process Used to Sell Public Property.** The Public Records Management Act states that “...each government entity shall ...maintain adequate and proper documentation of the ...decisions, procedures, and essential transactions of the governmental entity....”<sup>3</sup> The sale of public property involves many decisions, procedures, and transactions. In our view, the law requires that public entities document that process.

Similarly, the Open and Public Meetings Act required public officials to record any meetings held to consider the sale of public property. The act allows public officials to hold a closed meeting for “... strategy sessions to discuss the sale of real property ...” However, as with all closed meetings, the law requires that a recording be made of the deliberations.<sup>4</sup>

Furthermore, when public property is sold, the Utah Supreme Court requires that a public body keep a “legislative record” documenting the steps taken to ensure the property was sold for a fair price.

We therefore hold that when a legislative body enters into a transaction where public money or property is given in exchange for something, the good faith legislative judgment that the net exchange is for fair market value flowing to the entity needs to be *supported by documentation within the legislative record* of an independent determination of the value of the exchange. That information should be available to anyone seeking to review the transaction.<sup>5</sup>

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**Public entities have a legal obligation to document the steps they use to sell public lands.**

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<sup>3</sup> *Utah Code* 63A-12-103(4)0

<sup>4</sup> *Utah Code* 52-4-205(1)(4)

<sup>5</sup> Emphasis added.

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**Tooele County could provide us with very little documentation of the steps they used to sell the raceway.**

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The above statement comes from *Price Development v. Orem City*, which was cited extensively during the legal dispute between Tooele County and Center Point. It describes the need for government to document the steps used to conduct its business, including the sale of public property. The court also said that if the decision-making process is well documented, the court will generally give local entities great latitude and a presumption of validity in their effort to protect public interests.

**Tooele County Kept Few Records of the Process Used to Sell the Motorsports Park.** Tooele County could not provide us with documentation of the steps used to solicit proposals to purchase the motorsports park and to evaluate those proposals. In May and June of 2015, the county commissioners spent several weeks meeting with potential buyers, answering questions over the phone, and held face to face negotiations with representatives from Center Point and Mitime. The commission also held meetings during which they discussed the offers they had received and ultimately chose the proposal by Mitime. However, none of these meetings or discussions were documented.

When we asked for email communications, notes and other written communication regarding the initial sale, we were given very little information. Except for a brief, one-minute discussion at a county commission meeting, and a few email messages, we found very little information regarding the process the commission used to sell the property. With little documentation, we found it impossible to verify whether the commission had conducted a fair process for accepting the Mitime proposal. We believe the lack of documentation was one reason Tooele County had difficulty defending itself against legal claims that the commission had not acted in good faith and that its decision to sell the raceway to Mitime was arbitrary.

### **Tooele County Received Millions Less Than It Could Have from the Sale of Raceway**

In 2015 Mitime agreed to purchase the raceway for \$20 million. That sale, however, was cancelled due to a court challenge. In 2018, after years of litigation and other costly delays, Mitime once again agreed to purchase the property, but this time the agreed upon price was \$18.55 million. However, after deducting the county's legal fees,

operating losses it suffered during the three years it owned the property, the county's net gain from the sale was only \$7.4 million.

Due to the many variables that occurred during the past three to four years, we cannot say with certainty the extent to which the county's losses can be attributed directly to the mishandled sale of the raceway. What is clear is that a well-executed sale could have allowed Tooele County to complete the agreed upon \$20 million sale to Mitime in 2015. Due to several missteps by the county, and other events that were out of its control, the final sale was delayed. The county then suffered several years of operating losses and litigation expenses which greatly reduced the proceeds from the final raceway sale in 2018. Figure 2.3 provides what we believe to be the best estimate of the difference between the original sale price and the actual proceeds the county eventually received.

**Figure 2.3 Operating Losses and Legal Costs Reduced the County's Proceeds from the Raceway Sale.** After deducting \$9.36 million in operating losses and \$1.8 million in litigation costs, the sale of the raceway only produced a \$7.36 million gain.

<b>Final agreed upon sales price for raceway</b>	<b>\$18.55 million</b>
Less: costs of operating park paid to Mitime <sup>1</sup>	9.36 million
<b>Amount Tooele County received from the sale</b>	<b>9.19 million</b>
Less: cost of litigation	1.83 million
<b>County's net proceeds from the sale</b>	<b>\$7.36 million</b>

Source: Utah Motorsports Campus, Tooele County financial records

1. Includes closing costs of \$27,717 paid to title company.

Figure 2.3 shows the net proceeds from the sale of the raceway were about \$7.36 million, or about \$12.6 million less than the original \$20 million offer. However, we cannot say with certainty but it appears the county might have received as much as \$12.6 million more if the sale had not been mishandled.

### **Gains from the Sale of the Motorsports Campus Were Offset by \$9.36 Million in Park Costs**

Soon after the initial sale of the raceway was successfully challenged in court, Tooele County hired Utah Motorsports Campus (UMC), a subsidiary of Mitime, to manage the park. The county agreed that any operating losses incurred by Mitime would eventually be paid from the proceeds of the raceway sale. Figure 2.4 shows the

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**Due to the many variables that occurred three to four years ago, we cannot say with certainty how much the county lost through its mishandling of the sale.**

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**After deducting three years of operating losses and their litigation costs, Tooele County received millions less for the raceway than they would have if the first sale had not been mishandled.**

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\$18.55 million sales price for the raceway was offset by \$9.36 million in losses and other costs incurred by UMC in the county's behalf.

**Figure 2.4 Proceeds from the Sale of the Raceway were Offset by Three Years of Park Costs.** After deducting about \$9.3 million in costs, the \$18.55 million sale of the raceway only produced a \$9.2 million payment from Mitime.

<b>Proceeds from the sale in 2018</b>	<b>\$18,550,000</b>
Less: operating losses	5,408,193
Less: cost of assets purchased	2,864,933
Less: interest expense	508,920
Less: startup costs	417,209
Less: management fee	135,863
<b>Total costs paid Mitime:</b>	<b>9,335,118</b>
Less: closing costs	27,717
<b>Amount Tooele County received from the Sale</b>	<b>\$9,187,165</b>

*Source: Utah Motorsports Campus*

Each item listed in Figure 2.4 is discussed below:

**Proceeds from the December 2018 Sale: \$18,550,000.** In 2018 the county agreed to sell the raceway to Mitime for \$16.75 million which was the average of two independent appraisals of the property. Mitime paid another \$1.8 million for the equipment, vehicles, and other personal property on the site for a total sale price of \$18.55 million. The \$1.8 million represents the book value of those assets which is the original purchase price minus depreciation.

**Operating Losses: \$5,408,193.** Initially, the county agreed to cover any losses UMC might incur while operating the raceway. However, during its first year, UMC accrued operating losses of \$2.9 million. For 2017 the county imposed a \$1.25 million limit on the annual operating losses. In 2017 the losses dropped to \$981,818. In 2018 the limit was increased to \$1.5 million. The deficit rose that year to \$1.49 million, just under the agreed upon limit.

**Cost of Assets Purchased: \$2,864,933.** When the raceway became property of Tooele County, it lacked much of the equipment needed to operate the facility. With the knowledge of the county commission, UMC purchased these items. Later, UMC was allowed to purchase additional equipment, furniture and other assets to enhance the raceway. While the cost to the county was roughly \$2.8 million,

The final sales price for the raceway was \$16.75 million plus \$1.8 million for the equipment, vehicles, and personal property used at the raceway.

During the three years it was owned by the county, the raceway accrued \$5.4 million in operating losses.

the county agreed to sell the equipment as part of the final sale. As shown in the proceeds section of Figure 2.4, the county agreed to sell the equipment for its book value of \$1.8 million. Due to the use of depreciation schedules that are shorter than the asset's actual life, the county acknowledged, and we agree, that an asset's book value is typically lower than the price an asset can be sold for on the open market.

**Interest Expense: \$508,920.** As the raceway's annual losses grew, UMC agreed to finance the budget shortfall until the county was able to repay UMC using the proceeds from the sale of the property. UMC agreed to finance the debt at a rate of 4 percent.

**Start-up Costs: \$417,209.** Mitime assumed its purchase of the raceway would be upheld in court and spent the fall of 2015 preparing to take ownership of the facility. When the sale was voided by the court, Tooele County hired Mitime's subsidiary, UMC, to manage the park in its behalf. The county also agreed to allow UMC to add its startup costs to the raceway's 2016 operating costs.

**Management Fee: \$135,863.** To compensate Mitime for the cost of managing the raceway, the county agreed to an annual management fee equal to 1 percent of the park's operating revenues.

### **Cost of Litigation Further Reduced the County's Gain from the Sale to \$7.4 million**

Although the sale of the raceway resulted in a \$9.2 million payout from Mitime, the proceeds from the sale were further offset by the cost of litigation, as shown in Figure 2.5.

**Figure 2.5 Legal Costs Further Reduced the Proceeds from Selling the Raceway.** After receiving a payout of \$9.2 million and then deducting the cost of litigation, the county's net gain from the sale was roughly \$7.4 million.

<b>Proceeds from sale of the raceway</b>	<b>\$9,187,165</b>
Less: legal settlement with Center Point	1,550,000
Less: legal expenses	282,220
<b>Net gain to county from the 2018 sale</b>	<b>\$7,354,945</b>

*Source: Utah Motorsports Campus, Tooele County financial records*

The items listed in Figure 2.5 are discussed below:

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**After Tooele County rejected its offer, Center Point filed a claim against the county disputing the legality of the sale of the raceway. The county settled for \$1.55 million.**

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**We estimate that Tooele County's net proceeds from the sale of the raceway was \$7.4 million.**

**Legal Settlement with Center Point: \$1,550,000.** Center Point's first claim challenged the terms of the county's sale to Mitime. That claim succeeded in having the sale invalidated by the court. Tooele County then pursued a strategy of selling the property through the county's redevelopment agency. In response, Center Point filed a second lawsuit claiming the sale represented an "end run" around the judge's first decision. To settle the dispute, Tooele County agreed to pay Center Point \$1.55 million.

**Legal Expenses: \$282,220.** The cost of outside legal counsel for the two claims against the sale was \$282,220. That amount excludes the cost incurred by the county attorney and his staff in response to the claims.

### **Mishandled Sale of Raceway Cost Tooele County \$12.6 Million**

If the initial sale of the raceway had not been mishandled and subsequently challenged in court, Tooele County would have received the \$20 million that Mitime originally agreed to pay for the property. Instead, the sale was delayed for three years and the net gain from the sale was only about \$7.4 million. Figure 2.6 shows the difference between the original price and the net proceeds represents a \$12.6 million lost opportunity for the county.

#### **Figure 2.6 The Cost of the Mishandled Sale: \$12.6 Million.**

Tooele County would have earned \$20 million from the sale of the raceway had the sale been properly executed. Instead, it received about \$7.4 million.

Original sale price agreed to by Mitime in 2015:	\$20.0 million
Net proceeds from 2018 sale:	7.4 million
<b>Difference between net proceeds and original sale price:</b>	<b>\$12.6 million</b>

*Source: Tooele County, auditor generated*

The loss of \$12.6 million is not insignificant for a community the size of Tooele County. It equals 43 percent of the county's fiscal year 2018 general fund budget. With a county population of roughly 70,000, \$12.6 million also represents a loss of \$181 per resident. This amount does not include the nearly \$1 million in property taxes that were not paid to local taxing entities during the three years the property was owned by the county.



The following summarizes our concern for the lack of transparency used during the county's initial attempt to sell the raceway.

## **No Conflicts of Interest Found but Commission Can Improve Transparency**

By not adhering to best practices for selling public properties and by not documenting the decision-making process, the Tooele County Commission left itself open to criticism for rejecting the highest offer. Our review of county and UMC records found no support for allegations that the commissioners' decisions were influenced by a conflict of interest. However, to avoid facing similar criticism in the future, the Tooele County Commission should consider ways to provide greater transparency in the way it does business.

### **County Commissioners Accused of Conflicts of Interest**

When the commission accepted Mitime's \$20 million offer to purchase the motorsports park, they passed over Center Point's offer of \$22.5 million. Some questioned whether the commission's actions were motivated by a conflict of interest. For example, some asked whether Mitime (or its subsidiary UMC) had done business with one commissioner who owned several small businesses. Another allegation was that UMC gave a commissioner free office space in one of the buildings at the raceway. For these reasons, we were asked to identify any inappropriate business relationships between one or more of the commissioners and UMC.

**No Evidence of Business Dealings Between Commission and UMC.** We identified all the vendors and contractors used by UMC during the time UMC operated the motorsports park under county ownership. We found no connections between the commissioners and the companies doing business with UMC. Furthermore, UMC and county officials deny that office space was given to any member of the commission.

**A Third Offer for the Property Was Rejected for Understandable Reasons.** In December 2017, two years after the initial sale, the commission received a proposal from a third group. The group sent the commission a letter offering \$28.5 million for the raceway. However, we found that it was not a cash offer but was

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**We found no evidence of improper business dealings between the Tooele County Commission and the Utah Motorsports Campus.**

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**An outside consultant advised the commission that the Mitime offer provided greater long-term economic benefits than the Center Point offer.**

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contingent on a state appropriation. Because another entity was willing to pay cash for the property, the third offer was not given serious consideration.

**Consultant Provided the Commission with Several Reasons to Accept Mitime's Offer.** Although it meant turning down an additional \$2.5 million offered by Center Point, there was some justification for the commission's decision to accept the offer from Mitime. The commission's decision was based, in part, on the following observations made by the consultant who reviewed the proposals:

- The Mitime proposal was better from a long-term economic standpoint. The lower bid was offset by higher taxes over the long term.
- It was unclear whether Center Point had sufficient financial backing to follow through with its proposal.
- There was no evidence that Center Point knew how to operate a racetrack business. Mitime did have that capability.
- Center Point's proposal required a change in the zoning ordinance.

Although his observations contributed to the commission's decision to select Mitime's offer, the consultant did express concern about both proposals. Because of these concerns, he suggested the commission obtain an appraisal of the property and conduct further study of the economic benefits of the two proposals. Even so, the consultant did conclude that, with the limited information available, the Mitime offer was the better of the two. In response, the county commission chose to accept the Mitime offer without conducting further study. Although we still believe the commission did not conduct a fair and open process for selling the property, there were reasons to suggest the decision was at least somewhat justified and was not due to a conflict of interest.

### **Tooele County Needs to Clarify its Ordinances Regarding Land Sales, Records Retention, and Open Meetings**

In the future, the Tooele County Commission can avoid raising suspicion about its actions by conducting its business in a more formal and transparent manner. For example, the county needs to adopt a policy clarifying what commission business can and cannot be handled

during closed administrative meetings. The county also needs to follow the state's records retention guidelines.

**Tooele County Commission Should Adopt a Policy Regarding the Closure of Administrative Meetings.** As mentioned, we had difficulty finding documentation of the county's process for soliciting and selecting proposals to purchase the raceway. One problem, we believe, is that many of the key decisions regarding the sale of the property appear to have been addressed during the commission's closed executive sessions. The Tooele County Commission holds regular administrative meetings during which numerous county affairs are discussed. Because the county commission considers these meetings to be administrative, not legislative, they have decided there is no need to give public notice of the meeting or to keep a record of what was discussed.

A three-member county commission may perform both legislative and administrative functions. The commissions act legislatively when they set policy through an ordinance or when they adopt a budget. In contrast, implementing those policies and budgets is an administrative function. Because drafting policy, budgets, and ordinances are legislative functions, they must be conducted in a public setting. However, once established, the commission need not hold an open meeting to discuss the implementation of those policies and ordinances.

It is debatable whether decisions regarding the sale of the raceway are legislative or administrative matters. To the extent that the county code gives adequate guidance on how to conduct such a sale, the execution of that policy could be considered administrative. It could also be argued that the county code does not fully address all the policy decisions involved in selling a property with such large economic impact on the county. For that reason, the sale could be considered a legislative action and subject to Utah's Open and Public Meetings Act.

**Some County Commissions Conduct their Executive Meeting in a Public Setting.** To be safe, some county commissions in Utah handle all such matters during open and public meetings. Preferring to err on the side of being more rather than less open, other county commissions give public notice of all their executive meetings and keep minutes of the matters discussed. We contacted three counties

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**Many key decisions regarding the sale of the raceway were addressed during the commission's closed executive sessions.**

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**Other counties give public notice of their administrative meetings and keep records of the discussion.**

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that, like Tooele County, have three-member commissions. We asked them whether their administrative meetings are closed or whether they give public notice. Davis, Washington, and Weber Counties all report giving public notice of their administrative meetings and keeping a record of those meetings. We confirmed that these meetings are posted on the state's public notice website.

The Utah Association of Counties also recognizes that the public may not always understand when a county commission is acting as a legislative body or as administrative body. For this reason, the association also suggests erring on the side of greater rather than less public disclosure, stating:

. . . a county commission will often find itself at odds with the media and public if it insists on treating its staff meetings as private—even when the law permits such treatment. Commissioners might want to consider keeping their administrative staff meetings open to maintain transparency and good public relations.

Because a lack of openness and transparency contributed to the mishandled sale of the raceway, Tooele County should consider following the practices used in other counties and keeping administrative meetings on the record and open to the public.

**Tooele County Should Adopt a Records Retention Policy.**

Tooele County could not provide us with documentation of the process that was used to sell the raceway. As mentioned, the lack of documentation of the commission's official action, including the sale of a major piece of county property, is not consistent with the requirements of state law. The Open and Public Meetings Act allows for closed meetings to discuss the sale of property, but those meetings need to be recorded. Similarly, the Government Records Access Management Act, requires that all documents, including meeting minutes, letters, and emails that relate to an official action by county government need to be preserved.

We found very little information in the commission minutes describing the decision-making process used to sell the raceway. From the time Tooele County learned it would soon own the raceway to the

time that Mitime was announced as the winning bidder, the only on-the-record discussion was a one-minute agenda item in which the commissioners announced the property was for sale.

Even when we asked for email correspondence regarding the sale, we were told the much of that information was not available. One reason is that two of the county commissioners involved in the sale used their own private Gmail accounts to conduct official county business. The commissioner who represented the county during most discussions with prospective buyers told us that he did not retain any of the emails from the Gmail account he uses for county business.

As mentioned previously, the lack of a well-documented process made it difficult for the commissioners to show they had made a good faith effort when selecting Mitime's offer to buy the raceway. The lack of openness also led some to question the commission's motives in selecting the second-highest offer for the property. To avoid such questions in the future, we suggest the commission make a greater effort to document its deliberations and the steps taken to arrive at its decisions. Specifically, we recommend that Tooele County follow the law by either adopting a records retention policy that specifically addresses the retention of emails related to county business or by following the state's records retention policies.

## **Recommendations**

1. We recommend Tooele County adopt a policy regarding when to hold closed administrative meetings.
2. We recommend that Tooele County adopt a records retention policy that guides the retention of emails related to county business.

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**Tooele County does not retain copies of email correspondence as required by the state's records retention laws.**

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## Chapter III

# Tooele County's Oversight of the Raceway Was Inadequate

The Tooele County Commission did not fulfill its responsibility to oversee the raceway's finances. As soon as the raceway became a county-owned enterprise, the commission acknowledged its responsibility to provide oversight and to protect that county asset. However, in this chapter we describe several financial management practices that should have been used to oversee raceway operations provided by Utah Motorsports Campus (UMC) but were not. We found the following:

- Misleading financial reporting impeded accountability.
  - Financial statements did not disclose raceway liabilities.
  - Financial statements overstated raceway sale proceeds.
  - Deficiencies necessitate additional internal controls.
- The commission did not provide adequate budgetary oversight.
  - There is no record of ongoing oversight of budget.
  - The county's budget practices in general need to improve.
- Tooele County did not provide adequate oversight for capital asset purchases.
  - UMC purchases did not follow county code.
  - UMC purchased assets without business justification.
  - The county never performed an inventory at the raceway.

Tooele County did not follow commonly used financial controls to ensure that public resources are used efficiently and effectively and that public assets are protected. We are concerned that these controls were not applied at a time when the raceway was suffering large annual operating losses.

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**The Tooele County Commission did not fulfill its responsibility to oversee the raceway's finances.**

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**We are concerned that financial controls were not applied at a time when the raceway was suffering large annual operating losses.**

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## Misleading Financial Reporting Impeded Accountability

One basic tool used to provide accountability for an organization is its annual financial statements. They can help the public hold government officials accountable for their use of taxpayer funds. However, we found the county did not provide an accurate reporting of the debts incurred while UMC operated the raceway. Tooele County did not properly disclose county liabilities in 2016 and 2017 and overstated projected raceway sale proceeds. Furthermore, deficiencies reported by the county's external auditors indicate the county's internal controls over financial statements are not limited to just the raceway and need improvement in multiple areas.

### Best Practices Require Accurate Disclosure of a County's Financial Position

The Utah Office of the State Auditor requires government agencies to adhere to the generally accepted accounting principles established by the Government Accounting Standards Board (GASB). GASB reports that accurate financial statements are essential for accountability of public funds.

Governmental accountability is based on the belief that the citizenry has a "right to know," a right to receive openly declared facts that may lead to public debate by the citizens and their elected representatives. Financial reporting plays a major role in fulfilling government's duty to be publicly accountable in a democratic society.

GASB also notes the requirement that financial statements be accurate.

Financial reporting should be reliable; that is, the information presented should be verifiable and free from bias and should faithfully represent what it purports to represent.

In summary, requiring local government agencies to produce an accurate set of financial statements is one way to hold the elected officials and their agency managers accountable for the use of public funds.

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**Deficiencies reported by external auditors indicate the county's internal controls over financial statements need improvement in multiple areas.**

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**Requiring local government agencies to produce accurate financial statements is one way to hold elected officials and agency managers accountable for the use of public funds.**

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## 2016 Financial Statements Did Not Disclose Any Money Owed to UMC

During the time that the 2016 financial statements were being prepared, commissioners understood and acknowledged the liability the county had incurred at the raceway. Additionally, the county auditor, who is responsible for maintaining the county's accounting books, kept records documenting these obligations. However, these liabilities did not appear in the county's official financial statements, leading to unreported financial obligations of \$5.5 million in 2016 for raceway losses, capital asset purchases, and the raceway management fee.<sup>6</sup> That amount equals about one fifth of Tooele County's general fund budget for 2016.

Ultimately, the commission is responsible for the accuracy of the county's financial statements. All three members of the county commission were aware of the money owed UMC for managing the raceway. This is evident from the information presented in the settlement agreement they signed, acknowledging money was owed.

**Figure 3.1 Tooele County Commissioners Signed a Document Acknowledging Liabilities Owed to UMC.** It was the commission's responsibility to ensure the county's debts were disclosed in the annual financial statements.

2. <b>Acknowledgement of Indebtedness.</b> County acknowledges that, as of December 31, 2016, it is indebted to Manager in the amount of USD 5,476,428.
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*Source: 2016 Settlement, Compromise and Liquidation Agreement*

The county's independent auditors told us that Tooele County did not make them fully aware of the terms and conditions of the county's management agreement with UMC or the size of the county's indebtedness to UMC, as described in Figure 3.1. They said it was not until 2018, during the preparation of 2017 financial statements, that they were made aware of the county's obligations.

A member of the county commission told us that he believes the audit firm that helped prepare the financial statements should have asked for additional information on the management agreement and resulting liabilities. However, GASB concludes that financial statements represent the assertions of management (the county commission). Therefore, the commission is ultimately responsible for

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**Ultimately, the county commission is responsible for the accuracy of the county's financial statements.**

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**The commission acknowledged millions of dollars in county liabilities but did not publicly report them.**

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<sup>6</sup> The value of the raceway was undetermined and was not included as an asset on the 2016 financial statements.

the accuracy of financial statements including full disclosure of liabilities.

### 2017 Financial Statements Understated Money Owed to UMC

Although the county did not disclose raceway liabilities in its 2016 financial statements, it did disclose them in 2017. However, these liabilities were understated by up to \$2.8 million, providing a misleading picture of the county's financial position.

Actual cumulative county liabilities for the raceway totaled \$5.5 million in 2016 and \$7.2 million in 2017. Liabilities in the 2017 financial statements, however, were understated by \$2.8 million. Figure 3.2 reproduces the information included in the 2017 financial statements and compares that information to the county's actual liabilities.

**Figure 3.2 Tooele County's 2017 Financial Statements Understated Liabilities.** Actual liabilities in 2017 were \$2.8 million greater than those represented in the financial statements.

County Fiscal Year	Reported Money Owed UMC	Actual Money Owed UMC	Difference
2016	\$3,396,055	\$5,476,428	\$2,080,373
2017	4,425,606	7,246,596	2,820,990

*Source: 2017 Tooele County Financial Statements and final sale settlement documents*

The county's debts were understated due to an incorrect accounting of capital asset purchases for the raceway and the failure to disclose interest owed. Capital asset purchases were not listed among the county's debts even though Tooele County was legally responsible for reimbursing UMC the purchase price of the assets. Furthermore, the reported money owed UMC for 2017 does not include an agreed upon interest payment of \$219,000 for unpaid 2016 liabilities.<sup>7</sup> By understating liabilities on its financial reports, Tooele County did not provide county residents with a complete understanding of the county's losses at the raceway.

<sup>7</sup> The interest amount of \$219,000 represents 4 percent interest on the \$5.5 million liability in 2016.

2017 financial statements understated raceway liabilities by \$2.8 million.

County liabilities for the raceway did not correctly represent capital asset purchases and interest owed.

## Misleading Note Overstates Raceway Sale Proceeds

The county released their 2017 financial statements in November 2018, just prior to the final sale of the raceway. On the same page as the misstated liabilities (shown in Figure 3.2), the financial statement included a note (shown in Figure 3.3) that provided misleading information regarding the expected proceeds from the sale of the raceway.

**Figure 3.3 Tooele County 2017 Financial Statements Overstated Raceway Sale Proceeds.** This statement implies, incorrectly, that the only new raceway liability incurred during 2018 was a 1 percent management fee.

In September 2018, the County entered into a yet to be executed agreement to sell the property for \$18,550,000 to Mitime Investment Group pending a 14-day open public comment period. This amount will be further reduced by 1% management fees incurred during 2018.

*Source: 2017 Tooele County Financial Statements*

The information in Figure 3.3 is misleading because it implies that the proceeds from the sale of the park would be \$18.55 million, minus the 1 percent management fee for 2018, and the reported \$4.4 million in debts owed UMC (see Figure 3.2). Relying on this information, one might assume the net proceeds from the sale would be roughly \$14 million.

What was not disclosed in the financial statement, but known to Tooele County officials, was that the county would need to pay additional liabilities from 2018 and interest on outstanding raceway debts. The actual proceeds from the sale were ultimately \$9.2 million, which is \$4.8 million less than the \$14 million suggested in the 2017 financial statements.

## Deficiencies Point to the Need for Additional Internal Controls

Problems with the county financial statements were not limited to the misreported debts owed UMC. Tooele County's outside auditors also noted four material weaknesses in county practices that could lead to misstatements in the county's financial statements. The causes of these deficiencies were the same: lack of internal control processes and insufficient oversight. Tooele County confirmed they are in the process of addressing these reported deficiencies. We recommend that Tooele County improve its internal financial management practices to

**Raceway sale proceeds were approximately \$4.8 million less than those implied by financial statements.**

**Tooele County is in the process of addressing internal control deficiencies that could affect financial statements.**

ensure all relevant financial information is accurately represented in the county's annual financial statements.

## **Commission Did Not Provide Adequate Budgetary Oversight**

The commission did not use the typical annual budget process as a tool to effectively control spending at the raceway. Because the county owned the raceway and agreed to language in the signed management agreement, all of the raceway's revenues and expenses belonged to the county. Any losses incurred at the raceway would belong to the county. For this reason, statute requires that the raceway's revenues and expenses be included as part of the adopted county budget and that the raceway budget be disclosed to the public during the county's budget hearings. However, we found no documented evidence of the commission's oversight of the budget.

### **Annual Budget and Periodic Spending Reports Are Basic Tools Used to Control Spending**

Budgets and spending reports are basic tools used to monitor and control an organization's spending. The raceway was a county-owned operation and should have been included in the county's annual budget. The raceway revenues and expenditures should have been recorded within the county's financial accounting system. As with any unit of county government, the county commission should have received regular reports of how spending at the raceway compared to the budgeted amount.

**Budgets Are a Basic Tool for Controlling Spending.** GASB offers the following statement regarding the importance of budgets.

[A budget] is a form of *control* usually having the force of law. A legally adopted budget provides both *authorizations of* and *limitations on* amounts that may be spent for particular purposes... [Budgets] may provide a basis for *evaluating performance*.<sup>8</sup>

The above GASB statement describes the budget and periodic spending reports as basic tools that governments use to limit and

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**Budgets and spending reports are basic tools used to monitor and control an organization's spending.**

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**A legally adopted budget provides both authorizations of and limitations on amounts that may be spent for particular purposes.**

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<sup>8</sup> Emphasis in the original document.

control the use of public resources. These same principles regarding budgets and periodic spending reports are also reflected in Utah's Fiscal Procedures Act for Counties.<sup>9</sup>

**Commissioners Acknowledged Their Responsibility to Oversee the Raceway's Budget.** In its management agreement with UMC, the county recognized that the raceway is a county-owned operation and that the county was obligated to monitor spending. The agreement states:

[UMC] shall prepare and submit to the County for the County's approval, a proposed budget setting forth Manager's reasonable estimates of projected costs of operating, managing, maintaining, improving, and furnishing the property....

The agreement also anticipates there will be an ongoing review of the budget by the commission and recognizes the budget "...will likely need to be modified from time to time..." with the county's approval.

**As a County-Owned Operation, the Raceway Should Have Been Included in the County's Budget and Accounting Records.** The revenues and expenditures from the raceway, as well as any profits or losses, were the responsibility of the county. Therefore, according to the state Fiscal Procedures Act, the raceway's finances should have been tracked within a separate fund in the county's accounting records. Furthermore, the raceway's budget should also have been included as an item within the county's annual budget, which is presented to the public, approved by the commission, and reported to the state auditor.

### **There Is No Record of Ongoing Commission Oversight of Budget**

We found no record that the commission formally approved a budget for the raceway or that it periodically verified that UMC's spending remained within the budgeted amount. However, after suffering large losses the first year, the commission did take steps to control spending by imposing a limit on UMC's annual operating loss.

**There Is No Documentation that the Commission Reviewed UMC's Revenues and Expenditures.** Two commissioners told us

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**The raceway's budget should have been included as an item within the county's annual budget.**

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**The commission did take steps to control raceway spending after the first year of county ownership.**

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<sup>9</sup> See *Utah Code* Title 17 Chapter 36.

that they reviewed the raceway's budget and spending during periodic meetings they had at UMC. However, they said they were not allowed to take copies of the budget from the raceway. There was also no documentation of the meetings held at the raceway or of any formal action by the commission to approve the budgets. Furthermore, the raceway budget was not included with the budgets of other county agencies, which were reviewed and formally approved by the commission during the county's annual budget process. Finally, there was no accounting for raceway revenues and expenditures on the county's books. The lack of documented budget oversight and any public record of the raceway's spending activity represent serious deficiencies in the county's oversight of raceway operations.

**Outside Auditors Were Misinformed Regarding the County's Relationship with UMC.** We asked the county's outside auditors to explain why the raceway was not included in the county's annual budgets and all relevant financial statements. They said they were not informed that the raceway was being operated by UMC in behalf of the county and were not aware of this arrangement until we told them. The auditors said that if they had known this, they would have recommended that the raceway be listed as an enterprise fund on the county's books.

**After Suffering Large Losses in 2016, the Commission Took Steps to Limit Spending at the Raceway.** Although there is no record of the budget being used as an effective tool for controlling spending at the raceway, the commission did take some steps towards limiting the overall losses incurred by the county.

During its first year of owning the raceway, the county placed no limit on the operating losses that could be incurred by UMC. However, after suffering a \$2.9 million loss in 2016, the commission modified the management agreement with UMC by limiting the county's responsibility for annual losses in 2017 to \$1.25 million. As a result, UMC reduced its losses that year to just under \$1 million. For 2018, the commission agreed to a slightly higher limit on losses. In response, the losses that year increased to just under the \$1.5 million limit. Even though the commission did not use the budget as an oversight tool, it did take some steps to limit the park's operating losses.

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**Outside auditors were not informed that the raceway was being operated by UMC in behalf of the county.**

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**The commission limited the county's maximum liability for raceway losses in 2017 and 2018.**

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## **Tooele County's Budget Practices in General Need to Improve**

The county's poor budget practices were not limited to its lack of oversight of the raceway. The county's outside auditors reported concerns with budgetary practices in other areas of county government as well. For this reason, we recommend that the county take steps to improve its use of the budget as a tool for controlling spending.

In both the 2016 and 2017 financial statements, the county's outside auditors noted material weaknesses related to budgetary compliance, separate from the financial statement deficiencies noted previously. For example, in its 2016 audited financial statements, the outside auditors observed that there were six areas in county government in which expenditures exceeded appropriations. The auditors described this overspending as "an illegally created debt in violation of the Utah Constitution."

As a result, the outside auditors recommended the county adopt controls "so that adequate budgets can be prepared in the future." However, budgeting problems persisted in Tooele County. In 2017, the outside auditors again noted a lack of budget compliance in several areas. For this reason, we recommend the county take steps to strengthen its budget process to ensure expenditures do not exceed appropriated amounts.

## **Tooele County Did Not Provide Adequate Oversight for Capital Asset Purchases**

UMC made large asset purchases for the raceway despite not obtaining proper commission approval. In addition, UMC appears to have purchased capital assets without financial or business justification. Once those assets were purchased, the county did not adequately protect its investment by conducting regular inventories of equipment and other items it owned at the raceway. The absence of basic asset purchasing and inventory practices suggests that the commission did not provide the raceway with the same level of oversight that it provides other government departments.

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**Budgeting problems have persisted in Tooele County despite recommendations by outside auditors.**

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**All three members of the commission, the county auditor, and the department head should have approved large raceway purchases.**

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## UMC Purchases Did Not Follow County Procurement Code

The Tooele County Commission did not follow the regulations for approving large purchases, which are stated in county purchasing requirements and the management agreement. Some purchases lost value and became large county liabilities that needed to be paid at the end of the management agreement. Had the county applied its standard procurement process to assets purchased at the raceway, it may have avoided paying for large asset purchases that were eventually recognized as poor investments.

The management agreement between Tooele County and UMC specified that all asset purchases must follow county procurement requirements. Title 1, Chapter 8 of the *Tooele County Code* states:

For purchases of \$20,000 or more, prior authorization shall be required by the responsible Department Head or Elected Officer, three County Commissioners, and the Auditor.

We reviewed multiple raceway purchases over \$20,000 which showed approval from just one county commissioner instead of the required approval from all three commissioners, the county auditor, and the department head.<sup>10</sup> Two of the three commissioners and the county auditor confirmed they did not officially approve large purchases at the raceway. UMC also confirmed this practice.

Incomplete purchasing approvals do not appear to be a problem in other areas of Tooele County government. A sample of recent, large purchases from different parts of Tooele County government showed that approvals were given by the appropriate parties. This demonstrates that the commissioners treated the raceway differently from other county departments despite assurances that they would not.

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**Incomplete purchasing approvals do not appear to be a problem in other areas of county government.**

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<sup>10</sup> In this instance, the manager or director of UMC would likely be considered the department head.

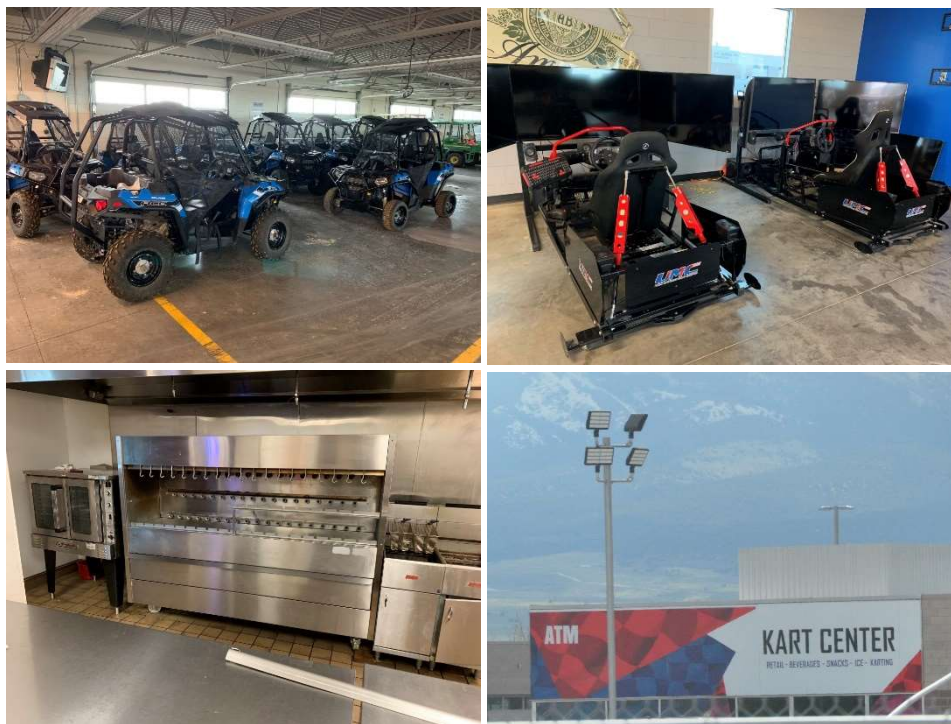


## UMC Purchased Assets Without Demonstratable Business Justification

We observed major equipment purchases that neither helped maintain the value of the raceway nor contributed to the growth in annual raceway revenues. There is no documented evidence the commission or UMC conducted an analysis that justified these purchases. In addition, when UMC eventually purchased the raceway, the county sold UMC the assets at a reduced value and after little use.

Purchases made at a county-owned enterprise, like a raceway, should be made with the goal of continuing the enterprise and contributing to its bottom line. Some form of analysis or study should be done to predict whether a purchase contributes to these goals. Conducting this type of analysis would place the county commission in a better position to avoid purchasing expensive assets that produced little or no revenue. The following section provides four examples of these assets. Each asset is pictured in Figure 3.4 and then discussed separately.

**Figure 3.4 UMC Made Several Poor Investments.** Without documented analysis, UMC purchased utility vehicles, racing simulators, barbecue equipment, and go-kart track lighting. The purchases contributed little, if anything, toward raceway profits.



Source: Auditor generated pictures taken at UMC

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**Purchases made at a county-owned enterprise should be made with the goal of continuing the enterprise and contributing to its bottom line.**

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**Certain purchased assets did not generate revenue for the raceway.**

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**UTVs and racing simulators were costly and underused.**

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**Rodizio Grill did not directly generate any revenue for the raceway.**

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**Go-kart track lighting was insufficient for night driving.**

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**Utility Vehicles (UTV).** UMC purchased a fleet of UTVs to be used on a new off-road course. The 12 UTVs cost approximately \$103,000 in total and were rarely used, due to safety concerns. They were found to be too powerful and too fast for the off-road course. UMC attempted to modify the UTVs to make them suitable for use but were unsuccessful. At least two were used during the winter for plowing roads. Figure 3.4, top left corner, shows the UTVs in storage at UMC. Tooele County eventually sold them to UMC for \$78,000.<sup>11</sup>

**Racing Simulators.** Like the UTVs, the racing simulators purchased by UMC were underused. The simulators cost \$108,000 in total. UMC purchased them to improve the experience at the go-kart facility. However, we were told the simulators received little use because they were designed for expert-level drivers. UMC reports typical customers of the go-kart track found the simulators too difficult to use. Figure 3.4, top right corner, shows the racing simulators in the go-kart center. Tooele County eventually sold them to UMC for \$79,000.

**Restaurant Equipment.** UMC purchased restaurant equipment for Rodizio Grill which operated a restaurant in the raceway club house. The agreement between UMC and Rodizio was structured in a way that resulted in UMC not directly generating any revenue from the restaurant during county ownership. UMC reports the space currently occupied by the restaurant was previously used as a private club house to entertain special guests to the raceway. Although the equipment purchased by the county and used by Rodizio Grill cost at least \$395,000, it did not contribute any revenues to the raceway's operations. Figure 3.4, bottom left, shows a specialized barbecue machine for the restaurant purchased from a company in Brazil. Tooele County eventually sold the restaurant equipment to UMC for \$219,000.

**Go-kart Track Lighting.** UMC spent approximately \$67,000 on lighting for the go-kart track, so it could expand its hours of operation. However, the lighting did not sufficiently illuminate the track, and UMC is currently looking to upgrade. Because it offered no value in terms of expanding go-kart operating hours and revenues, the

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<sup>11</sup> The sale prices listed in this section are the depreciated value of the assets per generally accepted accounting principles. UMC stated the depreciated value was the basis for the offer price. These assets were all sold to UMC as part of the \$18.55 million purchase price for the raceway.

lighting likely did not increase the track's ticket sales. Figure 3.4, bottom right, shows lighting for the go-kart track.

Neither the county nor UMC could provide us with analysis used to justify the purchase of the four assets described herein. However, they claim UMC performed this analysis as part of the informal annual budgeting process. Best practices require return on investment analysis before making such large purchases. For example, the Utah Department of Natural Resources (DNR), which runs state parks, requires a thorough analysis prior to authorizing a major asset purchase. DNR looks at the costs to operate and maintain the asset, projected revenues for the new service or asset, and the projected return on the investment. There is no documented evidence that Tooele County or UMC looked at these or similar factors.

Other Tooele County departments request appropriations for capital asset purchases as part of the county budget process. Tooele County residents could not scrutinize these questionable raceway investments because the raceway lacked a publicly accountable budgeting process. There was little opportunity for public review and comment because Tooele County never publicly justified these purchases.

### **Tooele County Never Performed an Inventory of Raceway Assets**

Another basic tool for managing assets is the use of inventory controls. Contrary to the requirements of county code, Tooele County did not inventory raceway assets during the three years it owned the raceway. At the very least, the county should have inventoried the assets once it took ownership of the facility and then again prior to the final sale of the raceway. This is a concern because UMC purchased many assets in behalf of the county between 2016 and 2018. The county then paid for those assets without verifying their existence.

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**County code requires the county auditor to physically observe county assets as part of an inventory process.**

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**A Physical Inventory of All County Assets Is Required.** *Tooele County Code* requires an annual inventory process for all county department assets. A section of Title 1, Chapter 9 states:

During the first month of each County fiscal year, the Auditor shall prepare complete roster listings of each department's inventory items. The Auditor shall verify that the items are physically present or accounted for by the

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**The county did not inventory the \$2.8 million of assets purchased by UMC.**

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**Additional concerns point to the need for a comprehensive review of county internal controls and practices.**

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Department and shall obtain the signature of the responsible Department Head or Officer on the roster who shall verify that the contents of the listing are accurate and complete.

**Tooele County Never Inventoried Its Assets at the Raceway.**

UMC purchased \$2.8 million in capital assets in behalf of Tooele County during the three years of county ownership. However, county officials report an inventory was not conducted in 2015, when the county took possession of the property, or in 2018 just prior to final sale. The previous county auditor, who was responsible for performing a physical inventory, confirmed an inventory did not take place.

The previous county auditor stated the county auditor's office did not have sufficient resources at the time to perform an inventory at the raceway. The county should have found the necessary resources to inventory the raceway due to county code requirements and the risk of asset loss. Many of the capital assets purchased by UMC were of a size or nature that they could be easily removed from the property. The specialized nature of the raceway and the fact that the county did not run day-to-day operations may have also contributed to the county's failure to inventory raceway assets. One commissioner stated he conducted an informal, spot inventory during county ownership, but there is no record of this.

Taken together, this report details Tooele County shortcomings related to the sale and management of the raceway as well as deficiencies related to county internal controls. Concerns in other areas of county government were brought to our attention that were outside the scope of this audit. One example is that the county reported purchasing professional services without using a competitive process, which contradicts the purpose and intent of county procurement code. In addition, we were informed that the county purchased several properties without proper authorization from the commission. These purchases were reportedly not part of the annual budget. For these reasons, we recommend Tooele County engage external auditors to complete a comprehensive review of county internal controls and management practices.

## **Recommendations**

1. We recommend Tooele County adopt sufficient internal controls to ensure all relevant financial information is represented in the county's annual financial statements and that the information is accurate.
2. We recommend Tooele County address budgeting weaknesses by adopting adequate internal controls for budgetary oversight so that expenditures do not exceed appropriated amounts.
3. We recommend Tooele County undergo a comprehensive external audit of their internal controls and management practices.

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## **Appendices**

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**Appendix A**  
**Tooele County Notice of Sale and Invitation to Bid**  
**July 21, 2015**

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**Appendix A. Tooele County's Notice of Sale and Invitation to Bid Did Not Follow Best Practices for Selling Public Property.** Unlike the best practices discussed in this report and illustrated in Appendices B and C, Tooele County only announced the sale two days before the bid deadline, provided minimal details about the property, did not list the required contents for a qualified proposal, and did not list criteria by which proposals would be evaluated. Since the county's process was lacking and evaluation criteria was not stated, when the county did not select the highest bid, it had difficulty defending itself against a lawsuit.

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**NOTICE OF SALE OF COUNTY-OWNED SURPLUS PROPERTY  
AND INVITATION TO BID  
MILLER MOTORSPORTS PARK**

Tooele County desires to sell the surplus property known as the Miller Motorsports Park and invites all interested parties to submit bids for purchase. The legal description of the property is as follows:

LOT 1, DESERET PEAK PUD PHASE 5, A PLANNED UNIT DEVELOPMENT  
OF TOOEELE COUNTY. 512.46 ACRES

Sealed bids must be submitted to the Tooele County Clerk, 47 South Main, Tooele, Utah 84074, prior to 5:00 p.m. on Thursday, July 23, 2015. Previously submitted bids are accepted and may be amended prior to the deadline. Please contact the Tooele County Commission with any questions at (435) 843-3150.

Tooele County reserves the right to reject any or all bids, waive any informality in the bid documents, and to negotiate a contract with any qualified bidder.

**DATED** this 20<sup>th</sup> day of July 2015.

**BY ORDER OF THE  
TOOELE COUNTY COMMISSION:**

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MARILYN K. GILLETTE, County Clerk/Auditor

(Please publish on July 21, 2015.)

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**Appendix B**  
**Request for Proposals**  
**City of Montpelier, Vermont**

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**Request for Proposals  
Sale by City of Real Property**

Property commonly known as  
55 Barre Street  
Montpelier, VT 05602

**Proposal Submission Deadline: 4:00 PM, April 15, 2016**

## **I. Introduction and Overview**

Pursuant to § 319 of the Montpelier City Charter (“Charter”) and the City’s Policy for Sale and Disposition of Municipally Owned Land/Property (the “Policy”), the City of Montpelier is exploring the potential sale and development of the real property owned by the City of Montpelier (the “City”) located at 55 Barre Street, Montpelier, VT and commonly known as the Montpelier Recreation Building (the “Property”). The Property can be generally described as a .30 acre parcel in Montpelier’s vibrant downtown and improved with a one to two story armory building that was built in 1932 and containing approximately 8,422 square feet. The site is improved with two driveways and a gravel parking area with capacity for 6 to 7 vehicles. The building is connected to municipal water and sewer. Additionally, the property is located in Montpelier’s vibrant downtown and would benefit from the strong business community and Montpelier Alive, the City’s downtown organization. Currently the Property is used as the administrative offices of the Montpelier Recreation Department and the associated gymnasium and storage.

At this time, the City Council is considering the possibility of selling the Property to assist the City in meeting the goal of “creating a hospitable environment for economic development and growth.” To that end, the City Council is seeking prospective bidders (“Bidders”) to make proposals for the purchase and development of the Property in accordance with the requirements set forth herein (“Proposals”). Proposals will be evaluated on a number of factors (outlined below) including, but not limited to: (i) ability to maximize the economic development potential of the site; (ii) addition to the City’s grand list and utility usage; and (iii) promotion of the Capital City’s downtown vibrancy.

The City will accept sealed Proposals until 4:00 pm, Friday, April 15, 2016 (the “Due Date”). Information relevant to this Request for Proposals (the “RFP”) and potential sale will be posted here: <http://www.montpelier-vt.org/857/Recreation-Building-Redevelopment>. It is the intention of the City to notify Bidders with Proposals which satisfy the requirements set forth in the Instructions to Bidders below, if any, on May 6, 2016 in advance of review and discussion of such Proposals by the City Council at their May 11, 2016 meeting.

The City reserves the right to waive any irregularity or defect in any submission, request clarification or additional information regarding Proposals, to cancel this RFP, and to reject any and all Proposals at its sole discretion. The City shall assume no liability for expense incurred by a Bidder in replying to this RFP.



A. The following documents are available at the City's website <http://www.montpelier-vt.org/857/Recreation-Building-Redevelopment>:

1. Request for Proposal (RFP)
2. Link to the City Charter and Policy
3. Property Title of Record
4. Capital Needs Assessment for Property conducted in 2014 and 2015
5. Commercial Appraisal for Property conducted in 2016
6. Link to the City's Zoning and Subdivision Regulations both current and proposed

**B. RFP Timeline**

- Wednesday, March 9, 2016 – RFP Release Date
- Weeks of March 14 and 21, 2016 – Optional site visits. Contact Jessie Baker to schedule.
- Friday, March 25, 2016 – Questions due by 1:00 p.m. All questions must be submitted in writing to [jbaker@montpelier-vt.org](mailto:jbaker@montpelier-vt.org).
- Tuesday, March 29, 2016 – Questions and Answers will be posted publically at <http://www.montpelier-vt.org/857/Recreation-Building-Redevelopment>.
- Friday, April 15, 2016 – Proposals Due by 4:00 p.m.
- Anticipated: May 6, 2016 – Bidders under consideration will be notified
- Anticipated: May 11, 2016 – City Council to consider a recommendation for sale.  
Note: If the City Council decides to proceed with a Proposal, such decision shall be subject to: (i) the negotiation and execution of a mutually satisfactory Purchase and Sale Agreement; and (ii) satisfaction of the pertinent terms and provisions of the City Charter and the Policy.
- Anticipated: May – Early June 2016 – Negotiate Purchase & Sale Agreement
- Anticipated: October 2016 – New owner takes title

## **II. Instructions to Bidders**

**A. Proposal Submission Procedures**

1. Sealed Proposals must be received on or before the Due Date (Friday, April 15, 2016 at 4:00 p.m.) Proposals received after the Due Date will not be considered.
2. Bidders shall submit one (1) clearly marked original, two (2) photocopies, and one (1) electronic version (either via email or on a flash drive) of their Proposal Package. Proposals must be received in one envelope or box marked "PROPOSAL – 55 Barre Street" and addressed to:

Jessie Baker  
Assistant City Manager

39 Main Street  
Montpelier, VT 05602  
[jbaker@montpelier-vt.org](mailto:jbaker@montpelier-vt.org)

3. Proposal Packages must include:

- A letter of introduction
- A proposed development plan outlining the proposed use of the Property, a corresponding business plan, demonstrated experience in the field or with similar businesses, timing of project completion, and demonstrated compatibility with existing and proposed zoning regulations. This should also include the number and types of jobs that will be created by the proposed development and the timing of jobs in the market, both in terms of availability and duration.
- A proposed timeline for taking occupancy of the Property under the development plan
- An offer of payment for the Property
- An analysis of municipal impacts of proposed development including grand list growth and utility usage that will be generated, if any, as a result of the development.
- A document providing evidence of Bidder's financial capability to complete the purchase and development plan
- A statement indicating how your Proposal represents the highest price and/or highest value to the City in terms of direct or indirect financial, economic, or community benefits.

Please review the evaluation criteria when responding.

Failure to provide any of the above requested information may result in disqualification of Proposal. The City reserves the right to request additional information pertaining to the Proposal Package, or any other matters related to the Request for Proposal. Proposal documents, including the Offer of Payment, must be signed by persons authorized to contractually bind the Bidder.

## B. Property Inspection

Non-mandatory property site inspections will be scheduled for the weeks of March 14 and March 21, 2016. Please contact Jessie Baker at (802) 262-6250 or email [jbaker@montpelier-vt.org](mailto:jbaker@montpelier-vt.org) to schedule a site inspection. Bidders are encouraged to inspect the Property.

## C. Questions Regarding Request for Proposal

Questions regarding the RFP must be made in writing and submitted electronically to [jbaker@montpelier-vt.org](mailto:jbaker@montpelier-vt.org). Questions are due no later than Friday, March 25, 2016 at 1:00 p.m. All questions and answers will be posted publically on Tuesday, March 29, 2016 at <http://www.montpelier-vt.org/857/Recreation-Building-Redevelopment>.

**D. Official Contact Information:**

Jessie Baker, Assistant City Manager  
City of Montpelier  
39 Main Street  
Montpelier, VT 05602  
[jbaker@montpelier-vt.org](mailto:jbaker@montpelier-vt.org)  
(802) 262-6250

**III. Method of Award and Selection Criteria**

Complete responses to this RFP will be evaluated by City staff and will be reviewed by the City Council. Decisions to sell the Property are at the sole discretion of the City Council. This RFP process shall not create a binding obligation on the part of the City Council to sell the Property unless and until a Purchase and Sale Agreement has been executed and the pertinent City Charter and Policy requirements have been satisfied.

The selection criteria shall include, but not be limited to, the following:

- Completeness of the Proposal Packet
- Proposal recognizes the highest price and/or highest value to the City of Montpelier
- Development Proposal meets the City Council's goal of economic development
- Development Proposal demonstrates readiness and proof that site can be operational within 12 months
- Development Proposal reflects that Montpelier is the Capital City and furthers the Montpelier brand including participation in our vibrant downtown
- Development Proposal satisfies requirements of current and proposed zoning regulations

**IV. Terms and Conditions**

All information contained within this RFP and all supporting documents is based upon information from a variety of sources. Additional information may be made available via written addenda throughout the RFP process. Bidders shall be responsible for their

own due diligence in preparing a Proposal. No representation or warranty is made by the City with respect to the condition of the Property, the suitability of the Property for a Bidder's potential use or the information provided herein.

- A. Bidders shall be responsible for the accuracy of the information they provide to the City in connection with this RFP.
- B. The City Council reserves the right to reject any and all Proposals, to waive minor irregularities in any Proposal, to issue additional RFPs, and to either substantially modify or terminate the proposed sale at any time prior to final execution of a Purchase and Sale Agreement.
- C. The City shall not be responsible for any costs incurred by a Bidder in connection with the preparation, submission, or presentation of its Proposal.
- D. Nothing contained herein shall require the City to enter into exclusive negotiations with any Bidder and the City reserves the right to amend, alter and revise its own criteria in the selection of a Bidder without notice.
- E. The City reserves the right to request clarification of information submitted in a Proposal and to request additional information from any Bidder.
- F. The City may not accept any Proposal after the time and date specified in the RFP.
- G. The City Council retains the sole discretion in the selection of a successful Proposal, if any.
- H. Upon selection of a Proposal, the City shall enter into negotiations with the successful Bidder for a Purchase and Sale Agreement with terms and conditions acceptable to the City. Until the execution of a contract, the City is under no obligation to sell the Property and it reserves the right to cease negotiations at any time and retain title to the Property. Except with respect to matters of title, the Property shall be conveyed to the party acquiring the same "AS IS" and without warranty as to quality, physical condition or environmental condition.
- I. **CONFIDENTIALITY:** The successful response will become part of the contract file and will become a matter of public record subject to public disclosure, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under 1 VSA, Chapter 5, the bidder shall clearly designate the material as such, explaining why such material should be considered confidential. The bidder must identify each page or section of the response that it believes is

proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the bidder if the identified material were to be released. Under no circumstances can the entire response or price information be marked confidential. Responses so marked may not be considered.

The RFP process shall in all respects be governed by, and construed in accordance with, the laws of the State of Vermont.

Thank you for your interest in doing business in the City of Montpelier.

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**Appendix C**  
**Evaluation Criteria Section**  
**Request for Proposals**  
**Multnomah County, Oregon**

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## **9. Evaluation Criteria**

All proposals that are received prior to the deadline for submissions will be evaluated by an Evaluation Committee. The evaluation will be based on the information submitted in response to the RFP Goals, Section 6, and the Submission Requirements, Section 7, as well as any related information that the County or PDC may discover in analyzing or verifying information submitted in the proposal or has subsequently requested. Benchmarks are provided as a guide to the Evaluation Committee for scoring the proposals. Proposals shall be evaluated in accordance with the following criteria, with the indicated weighting and a maximum score of 300 points:

- A. Property Proceeds** (130 Pts. Maximum) Multnomah County values it's stewardship of public assets. In 2005, the appraised value of the Property was \$8.825 million: Blocks 1, 2, and 39 were valued at \$4.825 million capitalizing parking lot income and Block 16 was valued at \$4 million using comparable land sales.
- A.1 Proceeds to the County will be evaluated based on the Purchase Price adjusted as provided in the Submission Requirements. (115 pts)
  - A.2 Additionally, Property may benefit from possible changes in land use entitlements and designations (e.g., Central City 2035 Plan) which may increase value. Any contingent Earn-Out Payments offered from increased entitlement benchmarks will be evaluated separately in this element. (15 pts)

### **BENCHMARK: Purchase Price; Earn-Out Payments**

- B. Development Implementation** (50 Pts. Maximum) Multnomah County expects expert execution for a successful development.
- B.1 The qualifications and experience of the development team and the soundness of the business plan, including pro forma and schedule, will be evaluated, including success in similar projects. (25 pts)
  - B.2 The clarity and certainty of the financing structure will be evaluated as a package. (25 pts)

### **BENCHMARK: Prior project experiences, especially similar projects; financial pro forma and financing structure, including funding conditions or covenants and identified uses and sources of funds.**

- C. Design Concept** (50 Pts. Maximum) Multnomah County regards the Property as a continuing legacy and recognizes the Property as an important downtown gateway, identified as such since the 1972 Downtown Plan. The design concept should embrace themes of community and connectivity.
- C.1 Public amenities provided will be evaluated on accessibility, affordability, and attractiveness to residents, workforce and visitors. (20 pts)
  - C.2 Pedestrian access from the retail core to the downtown waterfront should be maintained and enhanced. (15 pts)
  - C.3 Excellence in design will result in an iconic development that befits this gateway site. (15 pts)

**BENCHMARK: Public spaces and amenities; Pedestrian access; Site plan, massing plan, conceptual design elevations; Strategy for entitlements enhancement.**

- D. Economic Development** (50 Pts. Maximum) Multnomah County supports a prosperous and diverse economy. Employment and property values are key measures of economic performance and generate tax revenues for local jurisdictions.
- D.1 Permanent job creation potential will be evaluated by the total number of positions created, the percentage of family wage jobs of the total, and the proposed development's consistency with regional economic development strategy and the nature and reliability of the methodology used to support the claim. (30 pts)
  - D.2 Property value benefit will be evaluated by the total value of improvements proposed for the site together with the information offered to support the feasibility of the proposed project. (20 pts)

**BENCHMARK: Family Wage (2X Minimum Wage) jobs created; total jobs created; Compatibility with Economic Development Strategy; Total value of real property improvements at full build-out.**

- E. Sustainability Commitment** (10 pts) Multnomah County recognizes that sustainability in our built and natural environments is a foundation for our future and should be the keystone of development.
- E.1 LEED® development certification goals and Multnomah County's support for the Architecture 2030 Challenge, and the Climate Action Plan, including sustainable purchasing, will serve as the basis for evaluation. (10 pts)

**BENCHMARK: The Proposal is generally consistent with and supportive of Administrative Procedure PUR 8: II. Objectives; Climate Action Plan; Architecture 2030 Challenge**

- F. Diversity Outreach** (10 pts) Multnomah County honors the diversity of its residents and believes all benefit when all are included.
- F.1 The proposals should include plans for M/W/ESB participation, Workforce Training, and outreach to Multnomah County's diverse communities. (10 pts)

**BENCHMARK: The Proposal is generally consistent with and supportive of Multnomah County Workforce Training and MWESB programs; Community outreach**

## **Agency Response**

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May 7, 2019

Kade R. Minchey, CIA, CFE  
Auditor General  
Office of the Legislative Auditor  
P.O. Box 145315  
Salt Lake City, UT 84114-5315

RE: A Performance Audit of Tooele County's Sale of the Utah Motorsports Campus

Mr. Minchey:

Tooele County has reviewed the Performance Audit of Tooele County's Sale of the Utah Motorsports Campus and provides the following response to the audit report.

### **Recommendations**

Tooele County has reviewed the recommendations of the audit report and supports the recommendations. Below are the County's specific responses and the steps the County has taken, or intends to take, in the coming months.

Recommendation No. 1 from Chapter II: We recommend Tooele County adopt a policy regarding when to hold closed administrative meetings.

Response: Because commissions hold both executive and legislative powers, administrative meetings may unintentionally drift into legislative matters. Tooele County will formulate a policy to guide commission meetings protocol and explain how meetings topics will be regarded either as administrative or legislative in nature. Further it will provide guidance to enable management of meeting topics as either falling under "open or closed" meeting rules. In formulating such a policy, the County will examine the regulations of other Utah counties to determine and select best practices. The policy will determine and prescribe the level of documentation that will be employed to preserve the deliberative process via physical or electronic means.

Recommendation No. 2 from Chapter II: We recommend that Tooele County adopt a records retention policy that guides the retention of emails related to county business.

Response: In February 2019, the County initiated the process of drafting a policy to address this issue. It is the County's intent to follow the recommendations of the Utah State Archives for retention of emails as well as other provisions of the State's record retention policy. The County

expects to add tables to the State regulations to provide ease and clarity to the County's retention responsibility. As an integral part of that policy, County emails will be appropriately managed, collected and archived for easy retrieval according to the Utah Division of Archives and Record Service's "Email Management Guidelines."

Recommendation No. 1 from Chapter III: We recommend Tooele County adopt sufficient internal controls to ensure all relevant financial information is represented in the county's annual financial statements and the information is accurate.

Response: The County recognizes the importance of accurate financial information to allow responsible management of public funds. The newly installed financial team has already made progress by adding staff experienced in government accounting practices. Access to the ongoing financial information, both expenditures and revenue, has been made available on a real time basis to the various departments. The County has arranged for an experienced public auditor to be contracted to mentor production of and verify the accuracy of financial information that is routinely produced. The Commission meets monthly with the County Auditor and County Treasurer to review and discuss the financial results.

Recommendation No. 2 from Chapter III: We recommend that Tooele County address budget weaknesses by adopting adequate internal controls for budgetary oversight so that expenditures do not exceed appropriated amounts.

Response: In recent months, Tooele County has noted several lapses in good budgetary practice and financial control that have already been addressed. The purchasing policy for the County has been revised (approved March 19, 2019) adding provisions for additional direction for review, competitive bidding, record retention and has restricted exemptions for competitive bidding. The County is taking steps to assure authorization, funding and justification of expenses are taking place regarding capital projects and asset acquisition. Additionally, the current administration has expanded transparency to the public by routinely releasing check registers in connection with public meetings. The County has taken steps to more fully explain to the citizens in public meeting any material budget adjustments.

Recommendation No. 3 from Chapter III: We recommend Tooele County undergo a comprehensive external audit of the internal controls and management practices.

Response: As mentioned in the audit report for 2017, there were material weaknesses noted by the external auditors. In response to those findings, the external audit process for the 2018 financial records is already underway based on a desire to address weaknesses detected by the external audit of 2017. The audit firm has been directed to focus on internal controls and management practices. From those independent results, the County will take the necessary steps to correct deficiencies that may be detected.

As stated above, the County agrees with the recommendations and will use its best efforts to implement those recommendations in the coming months. An additional letter is being provided which addresses the narrative section of the report.

Sincerely,



Tom Tripp  
Chairman, Tooele County Commission

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May 7, 2019

Kade R. Minchey, CIA, CFE  
Auditor General  
Office of the Legislative Auditor  
P.O. Box 145315  
Salt Lake City, UT 84114-5315

RE: A Performance Audit of Tooele County's Sale of the Utah Motorsports Campus

Mr. Minchey:

The current Tooele County Commission and Auditor were not in office during the period in which Tooele County owned the Utah Motorsports Campus. As such, these individuals do not possess personal knowledge of events described in the narrative section of the report. The Commission has assigned the undersigned Commissioner Shawn Milne and County Attorney Scott Broadhead to reply to this section of the report.

The sale of the Utah Motorsports Campus and the management of the facility in the interim ownership period involved a complex set of circumstances. To fully understand the narrative section of the audit report, the County provides the following information. This information was provided to the audit team, but the County does not believe this information was adequately conveyed in the audit report.

#### **TOOELE COUNTY DISAGREES WITH ASPECTS OF THE NARRATIVE SECTION OF THE REPORT**

The County disagrees with some of the narrative of the audit report because it does not provide the proper context, ignores the variables at play in this matter beyond the County's control, or engages in conjecture beyond the Legislative Auditor's authority and competency. Below are the most significant objections to the audit narrative.

1. Although the audit report acknowledges that the County needed to expedite the sale, it does not adequately explain the emergency circumstances that existed or give agencies guidance on what to do when following recommended best practices could significantly decrease the property's value and cause the community economic harm. On May 11, 2015, the County received notice of Miller Motorsports Park's decision to terminate the lease of the raceway by February 29, 2016. However, Miller's would actually begin the process of vacating by the end of October 2015. No one in County leadership had any significant knowledge of the operations of the raceway and the many private businesses operating on the premises. After researching this new asset and its operations, it became apparent to the Commission that this was not the type of facility the County was equipped to operate. The Commission decided that it would be best to sell the facility to a private operator in order to

preserve its tourism impact to the County, maintain the jobs and businesses at the raceway, and maximize its property tax value.

Although the County intended to sell relatively quickly in order to preserve the coming 2016 racing season, this timeline was greatly accelerated by the Ford Performance Racing School. Ford notified the County on June 10, 2015 that it would leave the facility if the County did not choose a buyer by mid-July of 2015. Ford later extended the deadline to July 31, 2015. Ford was the largest single user and revenue source at the raceway. If Ford left, it would damage the sale value of the facility, may have induced other tenants to vacate and likely cause the facility to close. Faced with this deadline, the Commission decided to expedite the sale process to accommodate Ford's demand and retain as much value as possible. The commission notified the County Attorney on July 15, 2015 that it was taking informal offers on the raceway and of the July 31, 2015 deadline. This prompted the hurried public notice and short time to receive formal proposals for purchase of the raceway.

Due to the deadline imposed by Ford, the County chose an expedited sale process. There was no way the County could have followed the best practices outlined on page 7 of the audit report and still have met Ford's deadline. For example, best practice number 1 states that a county should obtain an appraisal. Each of the four appraisals that the County obtained after the initial sale took a minimum of 3 months (and up to 6 months) to complete because of its complexity. It simply was not feasible to follow the suggested best practices in these circumstances. Tooele County suggests it would be helpful if the Legislative Auditor worked with the Utah Legislature to address how local governments can lawfully expedite sales under such emergency conditions in order to preserve the property's value and avoid economic harm to the community. Tooele County hopes never to be in such a position again, but some other government subdivision may.

2. By interpreting legal theories, statutes, and case law to find causation where there is none, the Legislative Auditor's Office exceeds its legal knowledge and training. Tooele County concedes that it did not follow best practices in the racetrack's sale. As explained above, it acknowledges that it did not follow its normal course for selling the racetrack due to the emergency circumstances in which it found itself. The County also agrees that litigation over the sale and the corresponding delays resulted in proceeds several million dollars less than what it stood to receive had its initial sale to Mitime been unchallenged. But the Legislative Auditor engages in unsupported conjecture when it concludes that following the best practices it recommends would have avoided that outcome. (Pages 16-20.)

The district court invalidated the initial sale because it rejected the County's appraisal and concluded that the price for which the County sold the racetrack to Mitime was below its fair market value. Although the court did criticize the County's sale process, that was not the basis for its

conclusion. The Legislative Auditor doesn't explain how, given the court's ruling and the state of the law in 2015, following its recommended best practices "could have allowed Tooele County to complete the agreed upon \$20 million sale to Mitime in 2015" and avoided the losses it calculates. (Page 17.) According to both Tooele County's and Mitime's outside attorneys, unless a different sales process would have changed the district court's determination that the racetrack's fair market value was more than the \$20 million sales price to Mitime (a proposition for which they find no evidence), the outcome would not have changed. (Letters from the attorneys are attached.)

The fair market value of the raceway and how to determine it was the primary issue that the County and the parties litigated in the first lawsuit and the issue that the parties continued to fight in the ensuing years of litigation.

The report seems to base its conclusion on the law as it is, not as it was in 2015. In 2015, Utah Code Section 17-50-312 allowed sales only for adequate consideration, which Utah's courts had interpreted to mean present fair market value. In *Price Development Co., L.P. v. Orem City*, 995 P.2d 1237 (Utah) and *Municipal Building Authority v. Lowder*, 711 P.2d 273 (Utah 1985), for example, the courts prohibited local governments from considering future benefits from property sales. The Legislative Auditor's recommendation to consider items like property proceeds and economic development (pages 11-14), therefore, could be considered, if at all, only after the threshold of present fair market value had been reached. The district court determined that Mitime's offer did not reach that threshold; consequently, those and similar considerations were irrelevant to the sale's legality under the former version of the statute, and the Legislative Auditor's recommended process would have made no difference to the outcome.

For that reason, Tooele County promoted SB 114 during the 2018 legislative session. The bill was sponsored by Senator Harper to change state law to clarify the process for determining fair market value and allowing local governments to consider future economic benefits beyond price. SB 114 passed unanimously and is the current law. With the passage of this bill and the settlement with Center Point, the County was able to move forward with the final sale of the raceway and could legally consider future benefits in its calculation, which it described in its subsequent successful request for proposals, as the Legislative Auditor now recommends.

The Utah Constitution authorizes the Legislative Auditor "to conduct audits of any funds, functions, and accounts," Utah Const., Art. VI, Sec. 33, and the determinations it is permitted to make are specified in Utah Code Section 36-12-15(5). Nowhere is the Legislative Auditor, whose auditors do not appear to be lawyers, authorized to engage in legal analysis to speculate as to the legal conclusions that a court might have drawn had the County used its recommended best practices. While claiming that the "mishandled" sale (i.e., not handled according to recommended best practices) cost the County \$12.6 million is sensational, it is also wrong, and the Legislative Auditor exceeds its authority and its expertise in drawing the conclusion.

3. The report's narrative section ignores the substantial long-term economic benefit Tooele County realized by incurring the costs to keep the racetrack operating during the litigation. Nowhere in the Legislative Auditor's narrative does it even attempt to account for the significant benefits keeping the racetrack operating during the litigation had for Tooele County. If the County had not hired UMC to operate the racetrack during the litigation, it likely would have failed, and the businesses that depended on it, like the Ford Performance Racing School, would have closed shop, many of the garage tenants

would have left, and most of the 150 direct jobs and the many indirect jobs associated with the racetrack would have been lost. An analysis the County had performed by Zions Bank Public Finance at the time of the initial sale calculated that the economic losses to the county from simply closing the racetrack (lost jobs, lost transient tax revenue, and lost sales tax revenue) would be approximately \$2 million.

Nor does the Legislative Auditor's narrative contemplate how much the racetrack's value would have depreciated if Tooele County had allowed it to close its doors. By keeping the racetrack operating, the County was able to sell it as an active business, rather than a collection of tracks and empty buildings that hadn't been maintained for three years. That difference likely was significant, and the narrative's failure even to address it calls its calculation of estimated losses into serious question.

After accounting for the economic benefit attributable to keeping the racetrack operating during the litigation, the county's estimated \$9.3 million spent for that purpose was likely significantly offset. And as Mitime's plans for the racetrack are realized, the long-term economic benefits to the county will dwarf this upfront investment.

4. The Legislative Auditor points to no improper intent related to the alleged "misleading" reporting discussed in Chapter III for which there is no evidence. On several occasions, the Legislative Auditor characterizes Tooele County's financial reporting as "misleading," yet it points to no evidence that any county official was intentionally deceptive. Tooele County agrees that it failed to adequately convey accurate information among those with financial responsibility, but denies that there was any intent to deceive. When external auditors inquired about track-related liabilities and explained the need for reporting, subsequent reports were inclusive of the required information. The Auditors' narrative neglects to mention this important detail.

5. The County agrees that the Commission is ultimately responsible for the accuracy of the financial statements. However, the Commission is dependent on those with financial expertise to ensure that the financial information is accurate. The Commission, like most commissions throughout the state, is not GASB trained. It is clear that the correct questions were not asked by county auditors and, therefore, necessary information was not obtained.

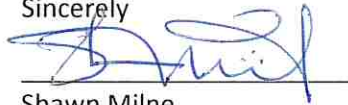
6. Audit report does not adequately recognize the uniqueness of the County owning and operating the raceway. While it may be normal or acceptable for local government entities to own and manage swimming pools, golf courses, and recreational facilities, it is not standard for counties to own and operate world-renowned racetracks. While public records exist to indicate how much subsidy from general funds the public will tolerate for the former types of facilities, it is far more challenging to locate such documentation for facilities of this scope. In fact, the examples of RFP/Process provided in the Audit report are not even analogous to the County's situation; neither example contemplated the sale of an ongoing business unit with a far-reaching economic impact. Making the situation even more complicated, the former owners of the facility did not present Tooele County with their Profits and Losses, Chart of Accounts, or book of business. The limited information that was shared was subject to a non-disclosure agreement. If that Agreement were not in place, Tooele County could potentially demonstrate the ways the County greatly reduced annual losses and took significant action to mitigate risks to taxpayers.



7. It was difficult to balance the public's right for information with the need of maintaining the privacy of the budget to protect the sale value of the raceway. Noting the losses alluded to in item #7, the County found itself with two competing interests. First, due to the highly competitive private marketplace of racetracks, several of which were also for sale during this time (often for less cost, with access to more spectators in more populated markets), the County required the full disclosure of detailed revenues and expenses. Second, it was crucial that the County retain its leverage throughout the negotiation process to maximize its net-proceeds. Despite the fact that such competing interests may occur when a governmental entity is embroiled in litigation while attempting to sell an active business unit, such interests are not contemplated in state statute or County code.

As state above, the County requests that the audit committee recognize and accept the County's objections to the audit report.

Sincerely



Shawn Milne

Tooele County Commission



Scott A. Broadhead

Tooele County Attorney

Attachments

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<sup>1</sup> Also licensed in Arizona

<sup>2</sup> Also licensed in Colorado, Illinois, Indiana and New York

<sup>3</sup> Only licensed in Indiana

<sup>4</sup> Also licensed in Wyoming

April 26, 2019

*Via Email*

Scott A. Broadhead, Esq.  
Tooele County Attorney  
[sbroadhead@tooeleco.org](mailto:sbroadhead@tooeleco.org)  
Gordon R. Hall Courthouse  
74 S. 100 E., Room #26  
Tooele, Utah 84074

Dear Scott:

This letter responds to your recent question whether, if an improved sale process had been used, Tooele County's 2015 sale of the Miller Motorsports Park ("Racetrack") to Mitime Utah Investment ("Mitime") for \$20 million still would have been set aside. A different process would have made no difference.

As the attorneys defending Tooele County in the 2015 lawsuit challenging the sale, we're uniquely qualified to evaluate whether an improved process would have made any difference. We conclude it would not have, based on the district court's conclusions in its judgment against the county, which were not based on process, but rather on price.

The district court invalidated the 2015 sale because it found that Mitime's \$20 million offer did not represent the racetrack's present fair market value, based in part on Center Point Management's ("Center Point") \$22.5 and \$28.1 million offers, the county's assessment valuation of \$28.1 million, and other valuation factors. (Ruling Tr. at 4:21-7:19 (Dec. 17, 2015); Findings of Fact and Concl. of Law (Jan. 6, 2016) at 25-26, ¶¶ 45-46 (finding that Center Point's offer established "a fair market value of no less than \$28,101[, ]306," which correlated to the county's assessment; 29-30, ¶¶ 57-58 (finding that, "where there are multiple willing and legitimate buyers," fair market value "is the highest price offered").) While we did, and still do, disagree with the court's legal determination, its valuation-based decision was not grounded in a finding of deficient process.

Unless a different process would have deterred Center Point's challenge or increased Mitime's offer more than \$8 million, it wouldn't have affected the outcome. We're unaware of

GOEBEL ANDERSON PC  
Scott A. Broadhead, Esq.  
April 26, 2019  
Page 2 of 2

any evidence that suggests either possibility.

Very truly yours,

GOEBEL ANDERSON PC



Barton H. Kunz II

CHRISTENSEN & JENSEN, P.C.

/s/Tyler V. Snow\*

Tyler V. Snow

\*Signed with permission received  
by 26 April 2019 email.



May 6, 2019

Via U.S. Mail

Kade R. Minchey, CIA, CFE  
Auditor General  
Office of the Legislative Auditor  
P.O. Box 145315  
Salt Lake City, UT 84114-5315

Re: 2015 Sale of Miller Motorsports Park

Dear Mr. Minchey:

The law firm of Parr Brown Gee & Loveless represented Mitime Utah Investment ("Mitime") in connection with its efforts to purchase the 511 acre Miller Motorsports Park ("Racetrack") from Tooele County (the "County") in 2015 and in the subsequent lawsuit brought by Center Point Management, LLC ("Center Point") to enjoin the sale. The purpose of this letter is to provide you a summary of the County's 2015 process it employed to sell the Racetrack from Mitime's perspective. Mitime is a subsidiary of Geely Automotive Holdings Ltd., the owner of Volvo, and which owns and operates automobile, motorcycle and kart racing facilities in China.

Mitime agreed to pay the County \$20 million to purchase the Racetrack in 2015. Mitime was willing to pay \$20 million despite the fact that Miller Motorsports Park, Utah, L.L.C. ("Miller") had operated at a substantial loss every year since the Racetrack began operations and even though it was more than double its then appraised value. The process identified and implemented by the County in 2015 was an open and fair process that evaluated not only the amount the interested parties were purportedly willing to pay, but also the long term plans of each of those companies, the management teams and their experience operating racetracks, and the overall economic benefit the County would receive from each proposal.

The County issued a formal public notice inviting all interested parties to submit by July 23, 2015 their sealed bids to purchase the Racetrack. Mitime understood that it was one of two interested buyers whose bids were being evaluated by the County. During the evaluation process, Mitime provided a detailed operating and development plan to the County explaining its vision for operating the Racetrack including its plan to maintain existing lessees and racing events.

As a result of the foregoing process the County identified Mitime and Center Point as two viable candidates to purchase the Racetrack. Prior to accepting Mitime's bid, the County engaged a number of experts and consultants to provide it with advice about the economic

benefits of each bid in order to ensure that it accepted the best bid not only in terms of price, but in terms of the long term economic impact of each bidder's plans for developing the Racetrack. The experts included Randy Sant, an independent expert involved in economic development consulting for approximately thirty years; the Economic Development Corporation of Utah ("EDC Utah"), which had been involved with Miller's development of the Racetrack since its inception; and the Public Finance Group at Zions Bank. Mr. Sant prepared a report for the County, describing and confirming the basis for his opinion that the Mitime proposal was superior. At EDC Utah, the County consulted with Jeff Edwards, President and CEO of EDC Utah, Todd Brightwell, COO, and Sherri Martell, Investor Relations, all of whom unanimously recommended that the County accept Mitime's proposal. Benj Becker, a long-time consultant for Zions Bank, was also asked to examine the overall economic impacts of the Mitime and Center Point proposals. Zions concluded that the additional benefits the County would receive from the Mitime proposal from property taxes, sales tax revenues, employment and tourism was an overall better value than the Center Point offer.

Additionally, Mr. J. Philip Cook, MAI, CRE, a well-respected and independent Utah appraiser, was asked to perform an appraisal to determine the fair market value of the Property. His report concluded that the fair market value of the Racetrack was \$9 million. Mr. Cook's appraisal used as comparable sales similar racetracks that had been recently sold in the United States. His valuation was also influenced by the fact that the Salt Lake market is too small to support large scale commercial race events, a predominate culture of many Utahns not willing to attend events on Sunday, and Miller's historic Racetrack operating losses.

The County also held public meetings on August 18, 2015 and October 13, 2015 to publicly discuss the issues related to the sale of the Racetrack, elicit public comment, and hear expert testimony. During the public hearing on October 13, 2015, testimony was delivered by Mr. Cook's office on the J. Philip Cook appraisal and Zion's economic report. Mr. Sant's report and conclusions were discussed and entered into the record. All of the consultants retained by the County unanimously recommended that the County accept Mitime's offer.

Following this long and careful process and after the October 13, 2015 public hearing, the County and Mitime executed a purchase agreement for the Racetrack in the amount of \$20 million. Center Point then challenged the County's decision by filing an action in Third District Court, not on procedural grounds, but on the basis that the County had erred in selecting Mitime's \$20 million offer given Center Point's larger \$22.5 million offer. After a preliminary injunction hearing, the Court ruled in favor of Center Point. The Court's ruling was that the County had failed to obtain the fair market value for the Racetrack because Center Point's offer was a larger cash offer, and therefore, represented fair market value as a matter of law. Consequently, the County cancelled the purchase agreement with Mitime. Mitime chose not to appeal the Court's decision, even though it strongly disagreed with the conclusion.

Kade R. Minchey, CIA, CFE  
May 6, 2019  
Page 3

As you know, the record in the Center Point proceedings is lengthy and informative, an examination of which would help resolve any questions about the County's process and its efforts to ensure the citizens of the County were receiving fair market value for the Racetrack as well as the best long term economic package for the continued operation of the Racetrack in the future.

Should you have any additional questions, we would be happy to address them.

Sincerely,  
  
Justin P. Matkin  
Parr Brown Gee & Loveless

cc: Jon Clegg, CFO, Utah Motorsports Campus  
Stephen E. W. Hale, Esq.

4835-3432-0278

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